

IN THE
Supreme Court of the United States

COOK COUNTY, ILLINOIS, *et al.*,
Petitioners,

v.
JOHN NAWARA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

**BRIEF OF ILLINOIS CHAMBER OF
COMMERCE AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICUS CURIAE*¹

The Illinois Chamber of Commerce is a business advocacy organization representing thousands of employers across Illinois that are committed to maintaining safe, inclusive workplaces in compliance with the Americans with Disabilities Act (“ADA”). The Chamber strives to promote a healthy business climate that fosters economic growth and job creation. Its members include both local enterprises and national companies that operate across multiple jurisdictions, all of whom depend upon consistent and workable interpretations of federal law to guide employment practices. These businesses are directly affected by the Seventh Circuit’s opinion in this case and by conflicting interpretations of the ADA adopted by different courts of appeal.

The Chamber has a strong interest in ensuring that the ADA is properly interpreted and applied in a manner consistent with both congressional intent and business realities. Because the question presented impacts the interests of workers, consumers, and businesses in Illinois, the Chamber and its members have a substantial stake in the Court’s resolution. The Chamber urges the Court to grant certiorari to restore uniformity and uphold the ADA’s intended balance between employee rights and workplace safety.

1. No counsel for a party authored any portion of this brief, and no person or entity other than *amicus* or its counsel made any monetary contribution to its preparation or submission. All parties were timely notified in advance of the filing of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents a clear and consequential circuit split on an issue central to the administration of the ADA: whether employees who are neither disabled nor perceived as disabled may recover damages for disability discrimination claims under the ADA pursuant to 42 U.S.C. § 12112(d)(4).

In this case, the Seventh Circuit incorrectly interpreted the ADA and held that a violation of section 12112(d) can constitute discrimination on account of disability, even when the employee is indisputably not disabled nor perceived as disabled. Pet. App. 14a.

The Seventh Circuit is not alone. The Sixth Circuit shares the same erroneous interpretation of section 12112(d). *Bates v. Dura Auto. Sys., Inc.*, 767 F.3d 566, 582 (6th Cir. 2014) (“The ADA ban of ‘discriminat[ion] ... on the basis of disability’ thus encompasses medical examinations and disability inquiries involving employees.”). The Second, Third, Fifth, and Tenth Circuits, by contrast, hold that some violations of section 12112(d) can be non-discriminatory, technical violations. *See Kosiba v. Cath. Health Sys. of Long Island, Inc.*, Case No. 23-6, 2024 WL 3024652, at * 3 n.1 (2d Cir. Jun. 17, 2024); *Tice v. Ctr. Area Trans. Auth.*, 247 F.3d 506, 514-16 (3d Cir. 2001); *Armstrong v. Turner Indus., Inc.*, 141 F.3d 554, 561 (5th Cir. 1998); *Griffin v. Steeltek, Inc.*, 261 F.3d 1026, 1028-29 (10th Cir. 2001).

This Court’s review is urgently needed because the Seventh Circuit’s rule chills lawful, nondiscriminatory

employer conduct, including the use of psychological fitness-for-duty assessments and other critical medical examinations. Employers must be able to ensure workplace safety and assess employees' ability to perform essential job functions without fear of exposure to litigation. Expanding ADA liability, particularly liability for damages, to cover individuals who are neither disabled nor perceived as such discourages these lawful practices and harms not only businesses, but also employees and the public.

The circuit split presented in this case also imposes on employers operating in multiple jurisdictions inconsistent and unworkable compliance standards. Consequently, these employers must default to the most expansive interpretation of the ADA to avoid exposure to time-consuming and expensive lawsuits.

The ADA was never intended to create a cause of action for damages untethered from disability-based discrimination. 42 U.S.C. § 12112(a) ("No covered entity shall discriminate against a qualified individual *on the basis of disability*...") (emphasis added); 42 U.S.C. § 12117(a) ("The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title shall be the powers, remedies, and procedures this subchapter provides to ... any person alleging *discrimination on the basis of disability*...") (emphasis added). But that is precisely what the Seventh Circuit's rule allows.

The Court's intervention is needed to restore uniformity in the law, reaffirm the statute's proper scope, and prevent a regulatory environment that punishes

compliance and prudence. This case presents an ideal vehicle for the Court to resolve an established circuit split involving a purely legal question that affects thousands of employers and millions of employees nationwide. The Illinois Chamber of Commerce urges the Court to resolve the conflict and clarify that the ADA's protections in this context extend only to individuals subject to discrimination because of disability.

ARGUMENT

I. The Seventh Circuit's Rule Chills Lawful Employer Conduct To The Detriment Of Employees, Consumers, and Businesses

The Seventh Circuit's rule is inconsistent with the fundamental purpose of the ADA. The ADA serves as a bulwark against workplace discrimination, protecting disabled individuals from mistreatment in their jobs and providing legal recourse if they are indeed mistreated.² The Seventh Circuit's ruling, however, warps the ADA into a restraint on employers, effectively preventing employers from using common-sense psychological fitness-for-work screenings, which are themselves designed to create a safe and productive workplace.

Under the Seventh Circuit's framework, employers are left with an impossible choice: risk liability under the ADA for requiring a behavioral assessment when an

2. 42 U.S.C. § 12101(b) ("It is the purpose of this chapter ... to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.").

employee shows signs of disturbance; or risk workplace accidents, safety violations, and increased litigation for failure to act.

The ADA surely was not meant to restrict employers from lawfully and proactively addressing credible safety concerns. It should not be reconfigured to penalize employers for vigilant management and early interventions when an employee shows signs of volatility or distress.

The Seventh Circuit's decision would do just that, transforming the ADA from a tool employed by disabled individuals to ensure a fair and safe workplace into a barrier to common-sense interventions at the expense of employees, the public, and employers.

A. The Seventh Circuit's Rule Harms Employees Because It Discourages Employers From Taking Common-Sense Measures To Ensure Workplace Safety

The Seventh Circuit's rule threatens employee safety, collegial work environments, and sensible hiring practices. If employers are afraid to require psychological fitness-for-work evaluations because of the potential for ADA liability, their employees will face increased risks—either directly from an emotionally dysregulated colleague or indirectly from a deteriorating work environment.³

3. Boshra H. Namin, Torvald Øgaard & Jo Røislien, *Workplace Incivility and Turnover Intention in Organizations: A Meta-Analytic Review*, 19 INT'L J. ENVT'L. RES. & PUB. HEALTH 25 (2022), <https://doi.org/10.3390/ijerph19010025> (studying the negative effects of workplace incivility).

In team-based industries, this dysfunction undermines trust, communication, and operational effectiveness for employees. For high-risk sectors—like construction, manufacturing, or law enforcement—the repercussions can be even more severe: an emotionally dysregulated employee’s breakdown could easily result in serious physical injury to the employee, her coworkers, or both.⁴

Nowhere is this risk of delayed intervention more obvious and costly than in the law enforcement setting. Often working in pairs or small teams in fast-paced, high-stress environments, officers must rely on each other for safety and effectiveness. The importance of teamwork is so central to policing that the Department of Justice maintains training material emphasizing “[t]eamwork can increase safety, improve effectiveness, strengthen communication, boost morale, and make a police department more successful.”⁵ An emotionally unstable officer unable to be an effective teammate leaves other officers vulnerable to the dangers inherent in policing.

4. See Aaron S. Howe et al., *Physical and Psychosocial Correlates of Occupational Physical Injury in the Global Construction Industry: A Scoping Review*, 18 ENV’T HEALTH INSIGHTS 1 at 9 (2024), <https://doi.org/10.1177/11786302241270371> (“Lack of supervisory and co-worker support for safety and wellbeing was associated with decreased work ability, absenteeism, higher job strain, and musculoskeletal symptoms...Conversely, job satisfaction and co-worker support has been reported to reduce the risk for lower back pain and work-related injury.”)

5. L.L. Bergner, *Building Teamwork Among Officers*, 12 LAW ENFORCEMENT TRAINER 10 (Nov./Dec. 1997), available at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/building-teamwork-among-officers>.

The potential harms of the Seventh Circuit’s rule extend beyond the breakdown of the workplace relationship between coworkers. Managers risk losing credibility if reports of an unstable coworker or hostile work environment appear to go ignored. When management seems unwilling or unable to act, employees’ trust in leadership erodes.⁶ This perception among employees can lead to increased employee attrition, as workers seek environments where their well-being is actively supported.⁷

The Seventh Circuit’s rule would also harm employees in need of mental assistance, which can be identified with fitness-for-work or other psychological evaluations. Without access to early, mild interventions, employees are left with a harsh binary choice: self-correct without necessary medical intervention or face termination. By chilling a proactive approach, employees who might have

6. Hyeon Jo & Donghyuk Shin, *The Impact of Recognition, Fairness, and Leadership on Employee Outcomes: A Large-Scale Multi-Group Analysis*, 20 PLOS ONE e0312951 (2025), <https://doi.org/10.1371/journal.pone.0312951> (studying relational factors between employers and employees that lead to job satisfaction or dissatisfaction).

7. Namin, *et al.*, *supra* note 3 (studying the effects of incivility in the workplace, including “perception of workplace incivility and turnover intention.”); *see also* Ella Arensman et al., *Implementation and Evaluation of a Multi-Level Mental Health Promotion Intervention for the Workplace (MENTUPP): Study Protocol for a Cluster Randomised Controlled Trial*, 24 TRIALS 621 (2023), <https://doi.org/10.1186/s13063-023-07537-0> (“Mental health difficulties and disorders in the workplace severely impact businesses through absenteeism/presenteeism, decreased productivity, workplace accidents and even self-harm and suicide”).

benefitted from early attention may instead reach a point of crisis when they can no longer benefit from reasonable accommodations.

Additionally, the Seventh Circuit's rule may distort hiring practices in a way that actually undermines the ADA's mission of preventing employment discrimination. Employers, deprived of reasonable tools to address behavioral concerns related to dysregulated employees, may become overly cautious and risk averse when determining who to hire in the first place. This could lead to reliance on subjective or biased assessments and hiring practices that exclude individuals even if they would easily pass a fitness-for-duty or other medical examination.⁸

In sum, the Seventh Circuit's restraint on common sense behavioral interventions would have numerous negative impacts on employees who can no longer be protected from dysregulated coworkers or get the assistance they themselves need.

B. The Seventh Circuit's Decision Harms Consumers And Undermines Public Safety And Confidence

The implications of the Seventh Circuit's rule, and the uncertainty created by the circuit split on the issue, extend beyond the workplace. The general public—consumers and clients—are also at risk if employers are deterred

8. Kuhn, K.M., *Risk Aversion and the Impact of Criminal Records in Hiring Decisions: An Integrative Multilevel Review*, in *Employing Our Returning Citizens*, 281 (E. C. Baldry et al. eds., 2024), https://doi.org/10.1007/978-3-031-54941-0_12 (discussing the inaccuracies of risk assessment in the hiring process through the lens of criminal backgrounds).

from using psychological fitness-for-work evaluations. Airline companies may be hesitant to intervene when a pilot shows signs of potential substance abuse. Hospitals might decide not to require reasonable evaluations when a nurse exhibits aggressive behavior toward patients. Police departments could feel restricted from guiding a troubled officer toward support. In each case, the inability to act preemptively because of fear of ADA liability, poses serious risks to public safety.

Beyond these high-stakes examples, consumers face diminished product and service quality. In fields requiring precision—such as food handling, childcare, and pharmaceutical manufacturing—waiting until termination-worthy behavior emerges increases the likelihood of public harm. Requiring employers to wait for disaster before intervening not only raises the risk of catastrophic outcomes but also erodes public trust in institutions. When the public perceives that companies are incentivized to conceal workplace risks like behavioral instability (which is what the Seventh Circuit’s rule incentivizes employers to do), it undermines confidence not just in individual organizations but in the broader systems throughout society.⁹

C. The Seventh Circuit’s Decision Harms Businesses

The Seventh Circuit’s rule negatively impacts employers for the obvious reason that it subjects them to

9. DLA Piper, Oxford Univ. Ctr. for Corp. Reputation & Populus, Rebuilding Trust in Business (2019), <https://www.sbs.ox.ac.uk/sites/default/files/2019-04/Rebuildingtrustinbusiness.pdf> (discussing the central role that trust plays in institutional legitimacy).

new and broader liability under the ADA. But the problem is also more nuanced than that. Without early intervention tools, employers face increased litigation risks—forced to wait until an employee’s behavior crosses a line before acting. This delay can expose them to lawsuits from employees and consumers for negligent hiring, negligent retention, respondeat superior claims, and hostile work environment allegations. Conversely, employers who are more proactive in requiring fitness-for-duty examinations may face discrimination claims if they act too quickly. Businesses are thus placed in a no-win situation where they are subject to potential liability whichever route they choose. Increased litigation is not only costly—it carries reputational harm and stigma.¹⁰

Companies operating under constant legal threat, yet unable to take meaningful steps to mitigate risk, suffer productivity losses. High turnover, time spent training replacements, erosion of institutional knowledge, and disengaged employees all contribute to organizational decline.¹¹

If allowed to stand, the Seventh Circuit’s decision would eliminate one of the most effective tools employers

10. Michael Hadani, *The Reputational Costs of Corporate Litigation: Long-Term Media Reputation Damages to Firms’ Involvement in Litigation*, 24 CORP. REPUTATION REV. 234 (2021), <https://doi.org/10.1057/s41299-020-00106-0> (finding a negative reputational impact when a corporation is even named as a defendant).

11. Namin, *et al.*, *supra* note 3 (estimating the cost of “cognitive distraction from work and project delays caused by workers being subjected to incivility” at an “annual cost of \$14,000 per employee.”).

have to maintain safe, stable, and inclusive workplaces. It invites a “wait and see” approach that unnecessarily endangers employees, consumers, and businesses alike.

II. The Circuit Split Creates Unworkable Compliance Standards For National Employers

The courts of appeal are sharply divided on whether an individual who is neither disabled nor perceived as disabled has a claim for damages for disability discrimination after being required to undergo a medical examination in violation of 42 U.S.C. § 12112(d)(4). The split creates a compliance nightmare for employers that operate across state lines and undermines the uniform national standards Congress intended the ADA to achieve.

The Second, Third, Fifth, and Tenth Circuits hold that the ADA does not support an award of damages for purported disability discrimination when the plaintiff is not disabled nor perceived as disabled, recognizing that some violations of section 12112(d) can be non-discriminatory, technical violations. *See Kosiba*, Case No. 23-6, 2024 WL 3024652, at * 3 n.1; *Tice*, 247 F.3d at 514-16; *Armstrong*, 141 F.3d at 561; *Griffin*, 261 F.3d at 1028-29; Pet. 12-15. The Sixth and Seventh Circuits deem discriminatory all “medical examinations and inquiries” that violate section 12112(d)(4) even if the plaintiff is undisputedly not disabled or perceived as disabled. *Bates*, 767 F.3d at 582; Pet. App. 14a; Pet. 15-17. The Fourth, Eighth, Ninth, and Eleventh Circuits have not cleanly weighed in on the issue. *Coffey v. Norfolk S. Ry. Co.*, 23 F.4th 332, 336 n.1 (4th Cir. 2022); *Cosette v. Minn. Power & Light*, 188 F.3d 964, 971 (8th Cir. 1999); *Fredenburg v. Contra Costa Cnty. Dep’t of Health Servs.*, 172 F.3d 1176, 1182-83 (9th Cir. 1999); *Harrison v.*

Benchmark Elecs. Huntsville, Inc., 593 F.3d 1206, 1212-13 (11th Cir. 2010); Pet. 17-19.

This divergence produces conflicting and confusing compliance obligations for national and regional employers. For example, an employer operating in both Kansas and Illinois faces diametrically opposite legal exposure for identical conduct—conduct that federal law should treat uniformly. As such, even if the majority of circuits adopt a more lenient view, the existence of even one stricter interpretation effectively dictates national behavior. Businesses with employees in multiple circuits must adhere to the most restrictive interpretation of the statute to avoid substantial exposure to litigation and the potential of liability for damages.

Alternatively, businesses can elect to maintain fragmented policies that vary by circuit—an impractical and legally perilous approach. Multi-state businesses cannot tailor hiring or fitness-for-duty protocols to each jurisdiction without incurring prohibitive administrative costs.¹² Nor can they risk adopting different policies for different locations without creating exposure to disparate liability or claims of unequal treatment. What is more, inconsistent treatment of employees performing identical work is an outcome squarely at odds with the ADA’s goal of uniform national standards and prevention of discrimination. *See* 42 U.S.C. § 12101(b)(1)-(2) (The purpose

12. *See* U.S. Chamber of Commerce, *U.S. Chamber Statement for the Record on Senate Commerce Hearing Titled “The Need to Protect Americans’ Privacy and the AI Accelerant.”* 30 (2024) (in advocating for federal data privacy legislation, recognizing the high costs imposed on businesses that must comply with a patchwork of laws across multiple jurisdictions).

of the ADA is “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and “to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities”).

The Illinois Chamber of Commerce represents employers that must navigate this regulatory puzzle daily. Uniform guidance from this Court is essential. Without it, employers face an untenable choice: resist administering imperative medical examinations to employees who pose legitimate danger for fear of expanded ADA liability or require well-founded evaluations of employees and risk massive exposure to costly litigation. Both outcomes frustrate the ADA’s twin goals of employee fairness and consistent, enforceable standards for employers.

This Court should grant the petition for certiorari to end the uncertainty surrounding this issue and allow businesses to move forward in a uniform manner across jurisdictions.

CONCLUSION

This Court can restore uniformity to the interpretation of 42 U.S.C. §12112(d). The issue is squarely presented and ripe for resolution. The conflict among the circuits is entrenched and outcome-dispositive in cases involving the statutory language. Until this Court resolves the question, multi-state employers—and the millions of employees on staff—will remain subject to conflicting and unpredictable obligations, while consumers suffer the ultimate consequences. The Illinois Chamber of Commerce urges the Court to grant certiorari and adopt

the approach taken by the Second, Third, Fifth, and Tenth Circuits, which is consistent with the purpose of the ADA and ensures that it operates as Congress intended: a national standard that both safeguards employee rights and provides clear, workable rules for employers.

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