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**U.S. SUPREME COURT ALLOWS EMPLOYER TO DENY JOB
THAT WOULD POSE SAFETY RISK TO EMPLOYEE
(June 10, 2002)**

Summary

Today, a unanimous U.S. Supreme Court ruled that an employer may deny a job to a disabled worker where the job poses a serious risk to the worker's health or safety. This ruling was based on the EEOC's guidance interpreting the Americans with Disabilities Act (ADA).

Details

The employer, Chevron Corp., had rejected the plaintiff's application for a position as a plant helper after learning that the plaintiff had been diagnosed with a chronic form of hepatitis. Chevron believed that exposure to solvents and chemicals in the refinery could make his deadly disease worse or even kill him. The plaintiff sued, arguing that he, not the employer, should decide if the job was too risky. In a decision that gained significant publicity, the Ninth Circuit Court of Appeals (the federal circuit which covers California) agreed with the plaintiff.

In reversing the Ninth Circuit's decision, the Supreme Court relied heavily on the EEOC's published guidance that expressly authorizes an employer's refusal to hire an employee because, given the employee's disability, performance on the job would endanger his own health. The Court noted that the EEOC's guidance was particularly helpful for those issues imprecisely addressed by Congress. Since the EEOC's guidance was not "unreasonable," the Court decided it should be followed.

What This Means

This decision actually brings federal law into closer alignment with California's disability discrimination law. Under California law, an employer may refuse to employ an individual in a position if, after reasonable accommodation, the individual cannot perform the essential functions of the job without subjecting him/herself to "an imminent and substantial degree of risk." Thus, it is now clear that under both federal and California law, employers may consider the job-related risks posed to the employee. But, beware - the risks must be

"imminent and substantial." Refusing to hire or promote someone because he or she is "frail," may injure a knee, or is a "workers' compensation risk," will *not* fall within this defense.

This E-Update was authored by [Mike Sullivan](#) and [Joe Connaughton](#). If you have any questions about this E-Update, please contact the author or any PPS&C attorney.

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