



Individualized Assessment of an Individual's Health Condition is Required in Order to Utilize Direct Threat Defense Under the ADA

(July 25, 2003)

Summary

Last year, the United States Supreme Court held that employers may legally refuse to hire an employee into a position that would create a “direct threat” to his or her own health. This week, the Ninth Circuit Court of Appeal clarified this rule by explaining that an employer must show a detailed, individualized assessment before making a “direct threat” determination.

Details

In *Echazabal v. Chevron USA, Inc.*, (D.C. No. v. CV-97-03498), the plaintiff had worked for a variety of maintenance contractors at a Chevron refinery in El Segundo, California beginning in 1972. Twice during the 1990s, Echazabal applied for maintenance jobs with Chevron, which found him well qualified for the positions. However, Chevron withdrew the offers after physical examinations showed he had hepatitis C, a chronic liver disease, which Chevron concluded would be exacerbated by its chemicals. After declining to hire Echazabal, Chevron also asked the maintenance contractor to remove Echazabal from the refinery or place him in a position that would eliminate his exposure to the chemicals. Echazabal lost his position at the refinery.

United States Supreme Court Decision

The Supreme Court deferred to the Equal Employment Opportunity Commission (“EEOC”) ADA Title I regulations that permit an employer to deny a job to a qualified person with a disability if the job would be potentially harmful to that individual (that is, a “direct threat” to that individual) even though he or she posed no safety threat to others and was qualified for the particular job. However, the Supreme Court reaffirmed that the direct-threat determination must be founded on an *individualized* assessment of a *current* and *significant* risk of substantial harm based on *objective medical evidence*, and that the risk cannot be eliminated with reasonable accommodation. The Supreme Court remanded the case to the Ninth Circuit Court of Appeals for further proceedings.

The Ninth Circuit Decision

The question for the Ninth Circuit was whether Chevron's decision to exclude Echazabal was based on a sufficiently individualized inquiry. The Ninth Circuit ultimately ruled that it was not.

In particular, the Ninth Circuit found that Chevron's reliance on the medical opinions of physicians who were non-experts in the areas of hepatitis/liver disease and toxicology was insufficient. The court ruled that Chevron should have conducted a more detailed inquiry, including consideration of the severity, imminence, and potential likelihood of harm. Because Chevron didn't do this, it lost.

What This Means

If you are considering taking any action (for example, transferring, or refusing to hire) any employee because you believe the position would be harmful to the employee's health or safety, be careful. Although such a decision is permissible, it will only pass legal muster if you do a detailed, individualized assessment based upon competent, current medical knowledge.

This E-Update was authored by Debora Buljat. If you have any questions about this E-Update, please contact the author or any PPS&C attorney at (619) 237-5200.

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We will examine the impact of new laws and court decisions and how these impact the workplace. We will review the changes you should make to practices and documents and will provide concrete suggestions for improving your policies in the coming year.

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