

Louisiana Employment Law Letter

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Highlights

- Supreme Court rejects 'Catch-22' ADA ruling
- From bad to worse: Grocery store owner found personally liable to retirees
- Legal rules employers should know
- Court clarifies time for filing discrimination, harassment claims
- State court vs. federal court: worlds apart when it comes to FMLA
- Coming soon to your desk: bad social security numbers
- In the workplace, DNA stands for 'Do Not Ask'
- EEOC addresses bias since terrorist attacks
- Union Activity Across the Country

DISABILITY DISCRIMINATION

Supreme Court rejects 'Catch-22' ADA ruling

The Americans with Disabilities Act (ADA) doesn't require you to hire a disabled applicant for a job if he would pose a direct threat to others, but the statute doesn't address the situation in which the applicant himself is in danger. But what if a disabled employee would risk injury to himself if you hired him for the job he's seeking? The U.S. Supreme Court recently decided this issue in favor of employers, ruling that an employer may refuse to hire an applicant if a disability poses a direct threat to his own health even if it wouldn't endanger the health of others. This decision will significantly affect employers and help them avoid a Catch-22.

Employee seeks job that will endanger his own health

Our regular readers may recall that this case involved a refinery's job applicant who for more than 20 years had worked for a contractor at various jobs in the refinery. The worker twice applied for employment with the refinery and was offered a job conditioned on the results of a physical exam. Each time, the exam revealed that the applicant had hepatitis C and that his condition could be aggravated or become potentially fatal by exposure to chemicals at the refinery. Accordingly, the refinery rescinded each offer of employment. It wasn't until the applicant's second unsuccessful attempt to obtain employment at the refinery, however, that he was barred from working there because of the potential health hazards, even on assignment for the contractor that employed him. That apparent inconsistency in the refinery's conduct was questioned by the worker's attorney and the courts that reviewed the case.

No-win situation: Employer sued for keeping employee out of harm's way

The applicant sued the refinery for allegedly violating the ADA because, according to him, the Act allows employers to refuse to hire someone because of a direct threat to health or safety only when the threat is to "others," such as co-workers. The applicant argued that the ADA doesn't permit an employer to refuse to hire someone when the job would pose a direct threat only to his

own health or safety. The refinery pointed out, however, that the regulations adopted by the Equal Employment Opportunity Commission (EEOC) permit an employer to refuse to hire a disabled applicant if the job sought would pose a direct threat to his own health or safety.

This case originated in California and made its way to the federal Ninth Circuit Court of Appeals, which sided with the applicant and ruled that the ADA doesn't contain a "threat to self" defense for employers. The refinery took the decision to the Supreme Court, which ruled in the employer's favor.

Court agrees with EEOC regulations

The Court explained that employers are justified by business necessity in excluding workers whose disabilities may cause them harm on the job. The Court explained that employers can't use broad "stereotypes" to reject disabled applicants but instead must make hiring decisions based on "reasonable medical judgment of an individual's present ability to safely perform the essential functions of the job."

This decision marks one of the few times the Court has agreed with the EEOC's regulations and clears the way for you to use applicants' own health and safety as a consideration in certain hiring decisions. It also provides you with a defense to ADA claims resulting from the decision to exclude a current employee whose disability presents a direct threat to his own health or safety.

Court recognizes employer caught between ADA and worker safety laws

The refinery also argued that putting the applicant in the job could have exposed it to legal liability under federal and state worker safety laws. Specifically, the employer explained that it might have had an obligation under the Occupational Safety and Health Act (OSHA) to reject the applicant because of his medical condition. The Court said a decision to hire a disabled applicant whose health would be in danger if he performed the job would place the ADA at "loggerheads" with OSHA. The Catch-22 that the Court addressed goes like this: An employer that deliberately endangers an employee's health could face severe penalties under OSHA, but an employer that refuses to hire or terminate the same individual because of a disability could face liability under the ADA. While the Court didn't expressly create an OSHA-based defense to ADA claims, the competing policies under the ADA (as interpreted by the Ninth Circuit) and OSHA weighed significantly in favor of the Court's ultimate decision that empl

Note of caution to employers

It's important for all employers to understand that this decision doesn't give you the unlimited right to reject an applicant based on the results of a preoffer medical examination. In fact, while the Supreme Court recognized the "direct threat to self" defense under the ADA, it sent the case back to the lower court for further consideration of the health risks posed by the worker's condition in the environment of an oil refinery. The Court noted that the issue of "how acutely an employee must exhibit a disqualifying condition before an employer may exclude him" is a job reserved for the trial courts. That determination will be very fact-intensive and will vary from case to case. However, you may now rely on a physician's reasonable medical judgment of a worker's present ability to safely perform the essential functions of the job. Thus, now's the time for you to review your job descriptions (or prepare them if they don't exist), keeping in mind that they should identify essential job functions

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