

ADA Employment Actions Only Allowable Under Title I, and not Title II Services, Programs and Activities

State and local government employment claimants must exhaust their remedies under Title I of the Americans with Disabilities Act when seeking Title I remedies for employment discrimination allegedly based on disability status. The decision, *Elwell v. Oklahoma Board of Regents of the University of Oklahoma*, dismissed the Title II claims of the Plaintiff, holding that Title II does not apply to employment discrimination.

The case was appealed to the Supreme Court, but that Court declined the petition without comment. *Elwell v. Oklahoma Board of Regents of the University of Oklahoma*, 693 F.3d 1303(10th Circuit 2012), No. 12-711, cert. denied (U.S. Feb. 19, 2013). This lets stand the decision of the Tenth Circuit, which held that a terminated employee may not sue under Title II.

Title I specifies what defenses and damages are available in employment discrimination cases and states that employees must exhaust their remedies with the U.S. Equal Employment Opportunity Commission or a state agency before filing a lawsuit.

The ruling aligned the 10th Circuit with the 3rd, 6th, and 9th Circuits. The 11th has held otherwise. *Bledsoe v. Palm Beach Soil & Water Conservation Dist.* 133 F.3d 816 (11th Cir. 1998).

What This Means to Counties

This means that counties may require their employees to use ADA request forms and should use business documentation to demonstrate the use of the interactive process to limit potential ADA damages.

For further information, contact CTSI at 303-861-0507.