

Employee with severe asthma can sue employer under ADA

The Tenth Circuit Court of Appeals has ruled that an employee with severe asthma can sue her employer under the Americans with Disabilities Act (ADA) for failing to make accommodations for her condition.

The Background

Under the ADA, an employer must take reasonable steps to accommodate a qualified employee with a known physical disability. Once an employee notifies her employer of the need for an accommodation, the employee and the employer must engage in an interactive process to determine what reasonable accommodations can be made. They should discuss whether there are any other positions within the company that the employee may be qualified to perform.

The Case

Victoria Albert, who suffered from severe asthma since childhood, worked for Smith's Food & Drug Centers for 14 years in variety of jobs. In 1999, while working as a cashier, Albert became concerned that her asthma was getting worse because of her exposure to numerous aggravating substances. Albert began to seek other positions within the company that would limit her exposure to her asthma triggers, however, she was not selected for any of the positions that she applied for.

In August 1999, Albert had a severe asthma attack at work. She took medical leave until October 14, when her doctor authorized her return to work with restrictions. Her doctor indicated that she should avoid cashiering to reduce her exposure to asthma triggers. Upon returning to work, Albert was temporarily assigned to the customer service booth. On November 1, Albert was informed that there were no more hours available in the customer service booth. Her supervisor said that she could have her cashiering job back if her doctor would approve it.

The doctor did not approve it and, consequently, Albert's last day of work at Smith's was on November 5. Smith's stated that Albert could have another position if one became available.

On November 18, 1999, Albert filed a charge of discrimination against Smith's with the Equal Employment Opportunity Commission. She alleged that Smith's failed to accommodate her disability in violation of the ADA by not reassigning her to another job.

In December 1999, several appropriate positions opened up, but Albert was not informed of those positions.

A district court dismissed the case, concluding that Albert was not disabled. Albert appealed. On January 29, 2004, the Tenth Circuit Court of Appeals reversed the lower court's ruling, indicating that she may qualify as disabled under the ADA. The court said that Albert's severe asthma substantially limits her ability to breathe, a major life activity. The court concluded that an employer must take reasonable steps to reassign a qualified individual to a vacant position or a position that will become vacant in the near future. The case has been sent back to district court for a jury trial to determine if Smith's made a reasonable attempt to accommodate Albert's disability.

What this Case Means to Counties

Employers have a duty to work with disabled employees to find reasonable accommodations. Often, accommodations can be made at very little expense. If a disabled employee seeks to be reassigned to a different position, the employer and the employee should work together to determine what other jobs the employee may be qualified to perform and what job openings are currently or may soon become available. For more information, contact CTSI at 303-861-0507.

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