

Supreme Court Rules That Employers Do Not Have To Provide Disabled Employees Jobs That Pose A Direct Threat To Their Health

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The United States Supreme Court has unanimously ruled that an employer does not violate the Americans With Disabilities Act ("ADA") when it denies a disabled worker a position if employment in the position sought or held would pose a direct threat to the employee's *own* health or safety. The court made this decision in a case entitled *Chevron U.S.A. Inc. v. Echazabal*.

Mario Echazabal worked for a number of independent contractors who operated at Chevron's El Segundo refinery between 1972 and 1996. In 1992 and 1995 he applied for jobs directly with Chevron. Both times Mr. Echazabal was offered employment contingent upon his passing a physical examination, but the offers were later rescinded when the physicals revealed he had Hepatitis C. The physicians retained by Chevron concluded that exposing Mr. Echazabal to the solvents and chemicals at the plant put him at risk of serious injury or death because his liver had been impaired by his Hepatitis C infection. In addition, even though Mr. Echazabal had worked at the refinery for many years since being diagnosed with Hepatitis C and apparently had suffered no ill effects, Chevron asked his employer to transfer him to another position outside of the refinery. As a result, Mr. Echazabal was laid off.

Mr. Echazabal filed suit alleging, among other things, disability discrimination under the ADA. Chevron defended its actions by pointing to a regulation promulgated by the federal Equal Employment Opportunity Commission ("EEOC") that permitted employers to deny employment to disabled individuals if such employment would present a "*direct threat*" to an individual's health.

The Ninth Circuit Court of Appeals, the Circuit covering California, sided with the employee and rejected Chevron's "direct threat" defense. The Ninth Circuit concluded the EEOC exceeded its authority in crafting the "direct threat" regulation and ruled the defense was only available to employers who could somehow divine that an individual's disability posed a direct treat to *others* rather than to the individual himself or herself.

Writing on behalf of a unanimous Supreme Court, Justice Souter announced that the EEOC's regulation was eminently reasonable and expressly rejected the Ninth Circuit's rationale that Congress intended to preclude employers from considering the possibly injurious consequences that might follow if a disabled individual were allowed to work in a position that posed serious health risks to the individual. The decision further noted that employees retain important protections against generalized stereotypes that might lead paternalistic employers to reject fully qualified disabled workers, because employers who utilize the "direct-threat" defense must base their decision on "an individualized assessment of the individual's present ability to safely perform the essential functions of the job," and the assessment must be premised upon a "reasonable medical judgment."

The *Echazabal* decision is significant because, unlike many of the ADA decisions the Supreme Court has rendered in recent years, it applies with equal force to disability discrimination claims arising under California's Fair Employment and Housing Act ("FEHA"). Under the FEHA, employers may refuse to hire or may discharge a disabled individual if the employee poses a threat to his or her own health or safety, or that of others, even with a reasonable accommodation. Hence, the direct threat defense is available to California employers facing disability discrimination lawsuits under California law. However, employers bear the burden of establishing that a disabled individual poses a direct threat. To meet this burden, an employer must show that, even with reasonable accommodation, the individual cannot perform the essential functions of the position: (1) without creating an imminent and substantial degree of risk to himself or herself; or (2) in a manner that would not endanger the health or safety of others to a greater extent than if an individual without a disability performed the job.

Employers and practitioners should be cautioned that courts have generally interpreted the "direct threat" defense narrowly, and that the terms "imminent, substantial" and "greater extent" have not been squarely defined to date. Consequently, future litigation will likely focus on what exactly constitutes a "direct threat."

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