

Risk to Employee Allows Job Denial, Supreme Court Rules

Insights

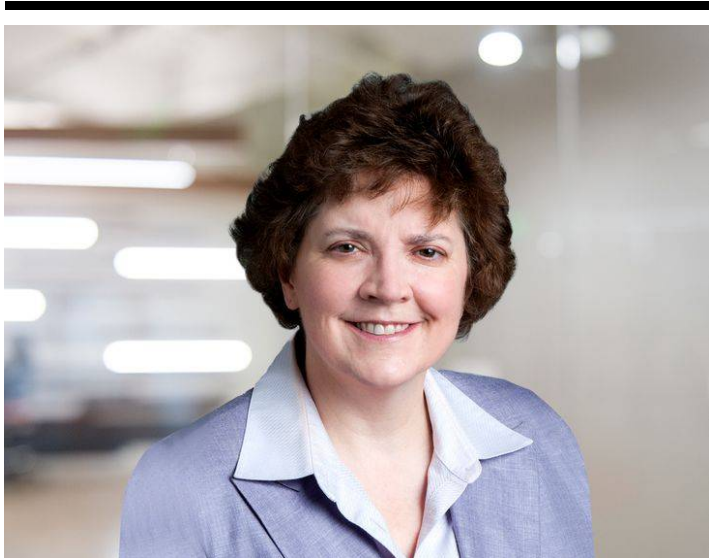
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On June 10, 2002, in yet another victory for employers under the Americans with Disabilities Act ("ADA"), the Supreme Court unanimously upheld an EEOC regulation, which states that an employer may choose not to put a disabled employee in a job that would pose a direct threat to the employee's health or safety. The plaintiff was an individual with Hepatitis C. His employer denied him a job after the employer's physician stated that working around solvents and chemicals might exacerbate the plaintiff's condition.

The plaintiff had successfully argued to the 9th Circuit Court of Appeals that a direct threat defense is permitted under the ADA only if the threat is to the health or safety of others, such as employees or customers, in the workplace. In reversing the 9th Circuit, the Supreme Court discredited the plaintiff's argument that the regulation was "paternalistic." The Court noted there was a difference between "workplace paternalism and ignoring specific and documented risks to the employee himself, even if the employee would take his chances for the sake of getting a job."

While the decision provides employers with a firm defense to certain types of ADA claims, it is not a license to engage in speculation concerning whether or not a job would put at risk the health of any particular disabled applicant or employee. The key to the defense is making sure there is *specific objective evidence* that the job in question does present a significant risk of harm to the employee.

Related People



Myra K. Creighton

Partner
404.240.4285
Email