

Supreme Court Rules On ADA's "Direct Threat"

June 12, 2002

Continuing its activist approach to the ADA, the United States Supreme Court issued its third ADA decision in six months on Monday, June 10. In this most recent case – *Chevron USA Inc. vs. Echazabal* – the Supreme Court upheld an EEOC regulation that permits employers to refuse to hire an individual when the individual's performance of the job at issue would pose a direct threat to his or her own health because of a disability.

Mario Echazabal had worked for many years for an independent contractor at a Chevron refinery. He twice applied for employment directly with Chevron in the refinery, and twice Chevron made him job offers contingent on his passing a physical exam. Both times, Echazabal failed the exam due to liver damage attributable to Hepatitis C. Chevron's doctors concluded that exposure to the toxins in the refinery would likely cause further liver damage, so Chevron withdrew its job offers to Echazabal. After withdrawing its second offer, Chevron directed the independent contractor to either reassign Echazabal to a job without exposure to toxins or to remove him from the refinery entirely. Based on this direction, the contractor laid Echazabal off in 1996.

Echazabal sued under the ADA, claiming Chevron violated the ADA when it refused to hire him and when it refused to let him continue working in the plant. Chevron defended its actions based on an EEOC regulation that "... an individual shall not pose a direct threat to the health or safety of the individual or others in the workplace." Because the United States District Court hearing the case concluded that Chevron acted reasonably in relying on its doctors' advice about the threat to Echazabal's health, it dismissed Echazabal's case.

The Ninth Circuit Court of Appeals reversed. It looked at the regulation itself and concluded that the EEOC went beyond its authority in issuing the regulation, since the ADA itself does not speak to the issue of denying someone a job because of a threat to his or her own health. Rather, the Court noted, the ADA only expressly permits employers to adopt standards to exclude someone from the workplace if his or her disability poses a threat to others in the workplace. In so ruling, the Ninth Circuit determined that Congress, as a matter of public policy, could not have meant to allow employers to act so paternalistically.

The U.S. Supreme Court determined that the EEOC's regulation was valid.

The Court first made a textual analysis of the ADA itself to conclude that Congress did not mean to preclude "threat-to-self" as a possible qualification standard employers could adopt, provided it was job-related and consistent with business necessity. The Court then approved of Chevron's argument that an employer's OSHA obligation to provide a safe workplace for every employee, considered in light of an employer's ADA obligations, justified the EEOC regulation.

What does *Chevron* mean for employers?

No change in policy is required, and employers may continue to enforce qualification standards that exclude employees or applicants from job opportunities when accepting them would directly threaten the individual's own health or safety. The Supreme Court's decision, however, is a good reminder for employers that decisions cannot be made based on paternalistic stereotypes, i.e., generalized fears that it would be bad for an employee to do a certain job based on assumptions about his or her condition, diagnosis, etc. The Court was very careful to note that the ADA's direct threat

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defense still requires employers to make an individualized assessment of the risk and threat, and that the threat must be real and significant.

In a separate ruling, the Supreme Court denied review of an appellate decision which upheld the NLRB's July 2000 decision in the case of *Epilepsy Foundation of Northeast Ohio vs. NLRB*. In that case, the NLRB ruled that nonunion workers have so-called "Weingarten" rights to have a co-worker accompany them to employer meetings that may result in discipline. In other words, the Supreme Court found no reason to disagree with the NLRB decision. Employers are therefore advised to offer their nonunion employees these rights, if they have not already been doing so.

If you have any questions about how this decision might impact your workplace directly, contact Megan Norris in Detroit at (313) 496-7594, email: norris@millercanfield.com. This message is for general information only and should not be used as a basis for specific action without obtaining further legal advice.