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## **A Workers' Compensation Rating Of 100% Disabled Does Not Relieve An Employer Of Its Obligations Under The ADA And FEHA**

*Cuiellette v. City of Los Angeles* (April 22, 2011) cautions employers that when an employee has been rated as 100% disabled for workers' compensation purposes, the employer is not relieved of its duties under the Americans with Disabilities Act ("ADA") and Fair Employment and Housing Act ("FEHA"). Practically speaking, a workers' compensation rating, even as high as 100% disabled, does not mean that the employee cannot be a qualified individual entitled to an individualized assessment of his or her disability through an interactive process and a reasonable accommodation.

*Cuiellette* also serves as a reminder that when an employer has a policy of offering employees permanent "light-duty" positions as an accommodation, the relevant inquiry to determine whether the employee is a qualified individual is whether they are able to perform the essential functions of the position to which they are, or would be reassigned, not whether they are able to perform the essential duties of the original position.

Cuiellette was a Los Angeles peace officer who suffered an injury and was placed on disability leave. He was designated 100% disabled as part of his workers' compensation proceedings. After being out for an extended leave, Cuiellette asked to return to work and was released to return to work by his treating physician with the general restriction: "permanent light-duty – administrative work only." Upon his return to work, the Los Angeles Police Department ("LAPD") assigned Cuiellette to one of its 250 permanent light-duty desk positions reserved for peace officers who cannot perform more rigorous duties. After Cuiellette performed the light-duty position for five days without incident, his supervisor informed him that the LAPD would not allow him to continue to work because he had been found 100% disabled for workers' compensation purposes.

Cuiellette challenged his dismissal in a lawsuit brought against the City of Los Angeles. He alleged, among other things, the City violated FEHA by sending him home because of his disability rating, failed to engage in the interactive process and failed to accommodate him. Cuiellette received a jury verdict of \$1,571,500. After three appeals on a number of aspects of the case, the Second Appellate District Court held that the workers' compensation 100% disability rating did not relieve the City of its obligations under FEHA. Specifically, the Court affirmed the jury's finding that the City had violated FEHA by summarily sending Cuiellette home *because* of his disability rating and without engaging in the interactive process.

The City argued that it had a legitimate non-discriminatory reason for sending Cuiellette home – it could not place someone in the workplace who, even for the purposes of workers' compensation, was 100% disabled. The City also argued that no one with a 100% disability rating had ever tried to return to work, Cuiellette could not perform the essential duties of the peace officer position and there was no way to reasonably accommodate him.

The Court disagreed, finding that even in light of the 100% disability rating, the City had an independent duty to comply with FEHA. The Court instructed that regardless of the workers' compensation rating, the City was required to evaluate Cuiellette's situation in accordance with FEHA. While the same health condition may inform the workers' compensation rating and an employee's ability to perform essential job functions, the analyses are different. The Court counseled that after receiving the 100% disability rating, if the City had concerns about Cuiellette's ability to perform the essential functions of the light-duty position, it had an affirmative duty to engage in the interactive process and make an effort to accommodate him.

The Court also rejected the City's argument that Cuiellette was not a qualified individual because he could not perform the essential function of the peace officer position. It held that because the City had a policy of reassigning disabled officers that could not perform the peace officer job duties to permanent light-duty desk jobs, Cuiellette must be evaluated under the essential functions of the light-duty position. Under FEHA, the question is whether the employee's medical restrictions prevent him from performing the essential functions of the position that "he held or that he desired to fill."

*Cuiellette* instructs employers that they are obligated to evaluate an employee's ability to perform the essential functions of their position independently from the rating issued in connection with a workers' compensation claim or proceeding. In addition, employers who have a policy or practice of reassigning employees to new positions as an accommodation need to evaluate the employee in light to the essential functions of the position to which they would be reassigned, not their original position.

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