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Hiring an Interpreter for a Deaf Lifeguard May be a Reasonable Accommodation under the ADA

On Thursday, January 10, 2013, the Sixth Circuit Court of Appeals, which governs Kentucky, rendered a pro-employee opinion, Keith v. County of Oakland, allowing a Plaintiff who was deaf and denied a lifeguard position because he needed a sign language interpreter. The Plaintiff, who has been deaf since birth, passed the lifeguard training course with the assistance of an American Sign Language interpreter, who shared instructions. The interpreter did not assist him in performing life-saving tasks, and he was offered a job as a wave pool guard. The offer was rescinded after a doctor conducting the pre-employment physical found that the Plaintiff could not be a lifeguard because he was deaf. Also, during the examination, the physician made off handed comments such as "he's deaf, he can't be a lifeguard." The physician also allegedly told the Plaintiff's mother that he had to fail the Plaintiff because he is deaf and if something happens, the employer will come after him with a lawsuit.

The lower court granted the employer's summary judgment motion finding that although the doctor did not make an individualized inquiry regarding the employee, the employer was the final decision-maker, and the decision was made adequately. The court found that the employer did not violate the ADA because the Plaintiff failed to show he could perform the essential functions of the job. And, any failure of the employer to engage in the interactive process was not an independent violation of the ADA.

The Sixth Circuit disagreed. On appeal to the Sixth Circuit, the Court noted that Plaintiff had a cochlear implant, and when he wore an external sound transmitter he could hear noises like alarms, whistles and people calling him. They also note that he is unable to speak verbally and communicated with sign language. The Court went on to state that a jury could find that providing Plaintiff with an interpreter during lifeguard meetings and instructions was reasonable. The opinion also questioned whether a consulting group advising the employer on aquatic safety made an individualized inquiry regarding Plaintiff's ability to be a lifeguard. "Indeed, the representatives testified that they could not provide an opinion regarding [Plaintiff's] ability to perform the essential functions of the position without seeing him in the actual work environment with the proposed accommodations in place," the Sixth Circuit wrote.

Lesson Learned: Employers must make an individualized inquiry about whether the employee can perform the essential functions of the job. This extends to outside consultants who are relied upon. Always engage the employee in the interactive process. In this case, if the employer had contacted the Plaintiff to engage him in the interactive process, it would have learned that he can detect loud noises through his cochlear implant which might have changed their decision. Also, ensure that those physicians performing the post-offer physical are aware of the ADA requirements and what the essential functions of the job entail.

For additional information on Employment or Labor Law issues,

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