



Seventh Circuit Allows Bridge Worker with Fear of Heights to Pursue Disability Discrimination Claim

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As previously reported, the Americans with Disabilities Act (ADA) Amendments Act and the EEOC's recently published final regulations significantly expand the definition of disability and the potential number of employees who may pursue claims of discrimination, retaliation or failure to accommodate under the ADA. Now more than ever, employers must pay attention to their obligations under the ADA. The Seventh Circuit recently published a decision in [Miller v. Illinois Department of Transportation \(IDOT\)](#), which illustrates the importance of maintaining consistent and effective procedures for responding to accommodation requests.

BACKGROUND

Darrell Miller had a fear of heights. In 2002, Miller was hired by IDOT to work on bridge maintenance and repair. For years, IDOT allowed him to swap certain high altitude tasks with his fellow crew members because of his fear. In March 2006, however, Miller filed a grievance against IDOT complaining that he had been assigned to perform an unsafe task at a high altitude. Less than two weeks later, Miller suffered a panic attack while trying to change a light bulb on a bridge beam. After the incident, IDOT placed Miller on sick leave and ordered him to complete a fitness-for-duty examination. IDOT's medical examiner formally diagnosed Miller with acrophobia and deemed him unfit to perform his job. Miller requested IDOT to continue to allow his coworkers to perform tasks he was afraid to perform, as it had done in the past, and his request was denied. Miller filed another grievance and was ordered back to work on May 1, 2007. IDOT fired Miller about a month later for commenting to another employer that he'd "like to knock the teeth out" of a coworker whom he disliked.

Miller subsequently filed an ADA lawsuit against IDOT alleging disability discrimination, retaliation and failure to reasonably accommodate a disability.

COURT'S RULING

The district court granted summary judgment to IDOT on all counts on the grounds that: (1) Miller's requested accommodation of having others perform certain of his job tasks was unreasonable; (2) working at high altitudes was an essential function of Miller's job; and (3) Miller could not establish that IDOT's reason for firing him was pretextual. The trial court did not address whether Miller was "disabled."

The Seventh Circuit reversed, finding that there were several issues of fact for the jury to decide. First, there was an issue of fact over whether IDOT "regarded" Miller as disabled. Even though Miller did not report any psychological impairment, IDOT's actions suggested that it regarded Miller as being substantially limited in the major life activity of working. Second, the Court questioned whether



working at high altitudes, though part of IDOT's job description for bridge crew members, was an essential job function based on the fact that Miller performed his job for nearly four years without performing certain high altitude tasks. Third, the fact that IDOT excused Miller from certain tasks in the past undermined its claim that it could not continue to provide that accommodation. Fourth, IDOT's reaction to Miller's grievances and requests for accommodation established enough circumstantial evidence for a jury to find that his termination was retaliatory.

INSIGHTS FOR EMPLOYERS

The *Miller* decision applied the pre-amendment version of the ADA, but foreshadowed the more liberal provisions under the statutory amendments and new regulations. The Court's findings in *Miller* highlight the importance of creating clear and accurate written job descriptions and maintaining consistent policies and procedures for responding to requests for disability accommodations. An employer's relaxed approach to disability accommodations in the past may limit its ability to deny accommodations for legitimate reasons in the future. The fact that substantially more individuals will be considered "disabled" under the new ADA elevates the urgency for employers to revisit their policies and practices immediately to avoid liability.

For a detailed analysis of the recently published ADA regulations, please [click here](#).

More Information

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