

March 2017

Second Circuit Reverses ADA Jury Verdict for Pharmacist with Fear of Needles

In *Stevens v. Rite Aid Corp.*, No. 15-277 (March 21, 2017), the U.S. Court of Appeals for the Second Circuit reversed a jury award of almost \$2 million in favor of a pharmacist who suffered from a fear of needles because he could not comply with Rite Aid's new policy that required pharmacists to administer immunization injections to customers.

In an effort to fill an unmet need for vaccinations in the health care market, Rite Aid imposed a new requirement that all pharmacists must administer immunizations. In support of the requirement, Rite Aid revised its job description to require pharmacists to obtain valid immunization certificates and to add immunizations to the pharmacist's essential job functions.

The plaintiff, Christopher Stevens, was a pharmacist who had worked for Rite Aid for 34 years. After receiving notice of the new requirement, Mr. Stevens presented Rite Aid with a note from his treating physician stating he suffered from trypanophobia, a fear of needles. Mr. Stevens wrote to his district manager to inform his employer that his condition caused him to become lightheaded and pale and feel he might faint. He requested a reasonable accommodation. In response to questions from Rite Aid, Mr. Stevens' physician stated Mr. Stevens could not safely administer an injection because the likelihood that he would faint would be unsafe for the patient and Mr. Stevens. A few months later, Rite Aid terminated Mr. Stevens' employment.

Mr. Stevens filed a lawsuit claiming wrongful termination, retaliation, and failure to accommodate his disability under the Americans with Disability Act. After a trial, a jury awarded him back pay damages of \$485,633, front pay damages of \$1,227,188, and compensatory damages of \$900,000, reduced by the trial court to \$125,000. The parties appealed.

In reversing the jury verdict, the appellate court explained that, to state a claim under the ADA, an employee must establish that he was "qualified to perform the essential functions of his job, with or without reasonable accommodation." The appellate court determined that performing immunizations was an essential function of Mr. Stevens' position as a pharmacist, and he could not perform this essential function of his job. The evidence showed Rite Aid adopted a policy to fill a need in the marketplace for immunizations, revised its pharmacist job description to include immunization of customers as an essential job function, and terminated the employment of another pharmacist who refused to administer immunizations. The evidence also showed that Mr. Stevens could not administer immunizations. Based on the evidence, performing immunizations was an essential job function, and Mr. Stevens could not perform that essential job function.

The appellate court also determined that Mr. Stevens failed to prove that a reasonable accommodation existed at the time of his termination. The appellate court rejected Mr. Stevens' arguments that Rite Aid could have offered him desensitization therapy, transferred him to a lower-

paying pharmacy technician position, or hired a nurse to administer immunizations as reasonable accommodations. The appellate court rejected Mr. Stevens' suggestion of desensitization therapy because the ADA does not require employers to offer medical treatment as a reasonable accommodation. The appellate court also noted Rite Aid had offered to transfer Mr. Stevens to another position, but he did not accept that offer. Finally, the appellate court determined the ADA did not require Rite Aid to hire a nurse to perform immunizations, which would eliminate an essential job function of the pharmacist position.

As a result, the appellate court remanded the case to enter a revised judgment in favor of Rite Aid.

For more information, or if you have questions about how the issues raised in this legal update affect your policies, practices, or other compliance efforts, please contact one of the following lawyers in the firm's [Labor, Employment, Benefits + Immigration Group](#):

[Stephen W. Aronson](#) | [Britt-Marie K. Cole-Johnson](#) | [Natale V. Di Natale](#)

[Matthew T. Miklave](#) | [Peter A. Dagostine](#) | [Rachel V. Kushel](#) | [Jean E. Tomasco](#)

[Ian T. Clarke-Fisher](#) | [Sandra Marin](#) | [Susan N. Masters](#) | [Abby M. Warren](#)

For insights on legal issues affecting various industries, please visit our [Thought Leadership](#) page and subscribe to any of our newsletters or blogs

Boston | Hartford | New York | Providence | Stamford | Albany | Los Angeles | Miami | New London | [rc.com](#)
Robinson & Cole LLP



© 2017 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson+Cole and you. Consult your attorney before acting on anything contained herein. The views expressed herein are those of the authors and not necessarily those of Robinson+Cole or any other individual attorney of Robinson+Cole. The contents of this communication may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.