

Essay analysis (human resources)



**ASSIGN
BUSTER**

Mr. Poole was diagnosed with Aids. He resigned from his job at Jackson County and transferred to Marion County where he applied for a job. Marion County required Poole to be medically examined. He was denied employment based on the result that he has AIDS even if he presented a medical clearance from Jackson County stating that his condition did not place students or others in the school at risk. Marion County did not offer him any employment. He filed a law suit.

This is a case of discrimination in being offered employment by reason of having AIDS. Accordingly this is specifically covered by the Americans with Disabilities Act of 1973 (ADA):

“ The ADA gives federal civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications... Persons with HIV disease, both symptomatic and asymptomatic, have physical impairments that substantially limit one or more major life activities and are, therefore, protected by the law. “(1)

The law applies even to public entities like Marion County:

The ADA prohibits all public entities, regardless of the size of their work force, from discriminating in employment against qualified individuals with disabilities.(2)

The following acts of Marion County can be considered violative of the ADA and thus discriminatory:

A. The act of Marion County in requiring an applicant be medically examined prior to any offer of a job is illegal. In a decided case it was ruled that the “

Chicago Board of Educations requirement for any job applicant to provide a complete medical history and to submit to a medical examination is tantamount to requiring HIV status disclosure and is thus violative of the Disabilities Act (ADA), the Rehabilitation Act, and Federal and State constitutional guarantees to privacy and equal protection under the law.”(3)

Thus the “ Board agreed not require applicants to submit to the medical exam unless they have a conditional offer of employment.” (4)

B. The act of denying Mr. Poole employment on account that he has AIDS. This allegation by Mr. Poole must first be proven. For him to find a basis for his allegation he must be found to possess all of the following:

b. 1. He is qualified for the position

The ADA prohibits employment discrimination against qualified individuals with disabilities. A " qualified individual with a disability" is a person who meets legitimate skill, experience, education, or other requirements of an employment position he or she holds or seeks, and who can perform the " essential functions" of the position with or without reasonable accommodation. (5)

b. 2. He is able to perform the tasks essential to the performance of his job:

Essential functions of the job are those core duties that are the reason the job position exists...Requiring the ability to perform " essential" functions assures that an individual with a disability will not be considered unqualified because of his or her inability to perform marginal or incidental job functions. (6)

Employers cannot choose not to hire a qualified person now because they fear the worker will become too ill to work in the future. The hiring decision must be based on how well the

individual can perform now.(7)

b. 3. He poses no risk:

The ADA permits employers to establish qualification standards that will exclude individuals who pose a direct threat -- i. e., a significant risk of substantial harm -- to the health or safety of the individual or of others, if that risk cannot be eliminated or reduced below the level of a " direct threat" by reasonable accommodation. (8)

Assuredly he is qualified for the position having taught previously from a public school in another county. At the time that he applied for the job he can perform the tasks relevant to the job he is applying for and finally he poses no risk as evidenced by the medical clearance issued by the Jackson County. Since all three elements are present, it is clear that there was discrimination and a clear violation of the ADA. His law suit will prosper.

(1) US Department of Justice. " QUESTIONS AND ANSWERS: THE AMERICANS WITH DISABILITIES ACT AND PERSONS WITH HIV/AIDS." Retrieved 3/26/10 at <http://www.ada.gov/pubs/hivqanda.txt>

(2) Ibid, Introduction question and answer no. 2

(3) Suit alleges Chicago schools denied job based on HIV. PubMed. Gov: 1997 Apr 18; 12(7): 4-5. Retrieved 3/26/10 at <http://www.ncbi.nlm.nih.gov/pubmed/11367218>

(4) School board settles with HIV-positive job applicant. PubMed. Gov: 1997 Nov 28; 12(21): 17. Retrieved 3/26/10 at <http://www.ncbi.nlm.nih.gov/pubmed/11367218>

(5) Op. cit., US Department of Justice. Introduction question and answer no. 3

(6) Op. cit., US Department of Justice. Introduction question and answer no. 4

(7) Op. cit., US Department of Justice. Introduction question and answer no. 8

(8) Op. cit., US Department of Justice. Introduction question and answer no. 9