

## Can You Fire The Needle-Phobic Pharmacist Who Refuses To Perform Immunizations?

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### Working Together

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By Melinda Kaufmann

As more and more pharmacies move into the role of providing immunizations, someone has to perform those immunizations. Often, this duty falls to the pharmacist. So, what happens when a pharmacist claims he cannot perform immunizations due to *trypanophobia* – the fear of needles? According to the Second Circuit Court of Appeals (the federal appellate court that covers Connecticut), because an employer need not reassign an essential function of the job, and at least at Rite Aid providing immunizations was an essential function, the pharmacist can be terminated.

The case involved Christopher Stevens, a pharmacist who has worked for Rite Aid for 34 years. In 2011, Rite Aid amended its policies and its job descriptions to require all of its pharmacists to hold a valid immunization certificate and to administer immunizations. In response to this change, Stevens' doctor informed Rite Aid that he was needle-phobic and cannot administer immunizations by injection. Stevens further explained that when he is near needles it causes him to experience lightheadedness and fainting. When the employer requested information from the doctor as to whether there was an accommodation that would allow him to administer injections, the doctor responded that Stevens could not safely administer an injection as he would likely faint and it would be unsafe for Stevens and the patient. Rite Aid, therefore, terminated his employment. After a jury trial, the jury found for Stevens and awarded him over \$2,000,000 in damages including back and front pay and non-pecuniary (*i.e.*, emotional distress) damages.

The Court of Appeals reversed the jury's decision, finding that administering immunizations was an essential function of the pharmacist's job at Rite Aid and that since there was no accommodation that would allow him to perform that duty, his employment was properly terminated. An employer is never required to accommodate an employee by eliminating an essential function of the job or requiring someone else to perform an essential function for an employee who cannot perform it himself.

So what makes a job duty "essential?" Courts generally look at things such as written job descriptions, the amount of time spent on a particular task, the mention of the task in the collective bargaining agreement (if there is one), and the work experience of prior and current employees in the position to make that determination.

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What is the take away for employers? Having updated, detailed, and accurate job descriptions that identify the essential functions of a job is key to being able to defend against this type of claim. So is consistency in requiring all employees working under that job description to perform all of the essential functions of the job. Finally, it is important to engage in the interactive process whenever an employee requests an accommodation for an alleged disability. In this way, either a reasonable accommodation will be identified that will enable the employee to perform the essential functions of his job, or it can be accurately determined that no such reasonable accommodation exists.

As a reminder, while an employer is not required to reassign essential functions of a job as a reasonable accommodation, the employer may be required to reassign non-essential functions. An employer may also need to determine whether there is an open and available position for which the employee is qualified, and the essential functions of which he/she could perform despite his/her disability, if it is determined that the employee can no longer perform the essential functions of his/her own job.

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