

## **Supreme Court Upholds EEOC Regulation Allowing Employers to Screen Out Disabled Workers Based on Risk of Harm**

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In *Chevron v. Echazabal*, 70 U.S.L.W. 4516 (June 10, 2002), the Supreme Court upheld employers' rights under the Americans With Disabilities Act ("ADA") to refuse to hire a disabled person if his or her performance on the job would endanger the person's health.

The ADA prohibits discrimination against qualified individuals with a disability, because of the disability. Discrimination includes using standards that "screen out or tend to screen out" disabled persons. However, employers may assert an affirmative defense for action taken pursuant to such a standard, if the standard is "job related" and "consistent with business necessity." Permissible standards include "a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace" if the individual cannot perform the job safely without a reasonable accommodation. 42 U.S.C. § 12113(a), (b) (*emphasis added*). By regulation, the EEOC allows employers to screen out a worker not only for risks posed to others, but also for risks to the worker himself. 29 C.F.R. § 1630.15(b)(2).

In *Chevron*, Mario Echazabal twice applied with Chevron for a job at an oil refinery. Both times, Chevron withdrew conditional offers of employment to Echazabal after physical examinations, because Chevron's physicians determined that exposure to the toxins at the refinery would aggravate Echazabal's liver abnormality.

Echazabal filed suit under the ADA challenging Chevron's decisions. At the District Court level, Chevron successfully defended the claim, relying on the EEOC regulation permitting employers to screen out workers who would pose a direct threat to their own health. On appeal, the Ninth Circuit held that the EEOC's regulation was invalid, because the ADA specifically permitted employers to adopt qualifications based only on the threat of harm to "others," and not the threat of harm to the disabled himself.

The Supreme Court reversed the Ninth Circuit's decision and upheld the validity and reasonableness of the EEOC regulation.

Thus, employers may once again rely on the EEOC's regulation to screen out disabled persons who would pose a direct threat of harm to others or themselves. The employer must remain cognizant, however, that relying on the direct threat defense will require demonstrating that a decision was based on reasonable medical judgment, current medical knowledge, and an "individualized assessment of" the person's ability to perform the essential functions of the job in question safely and the risk and severity of the potential harm.