

ADA Decision Shows Need To Work With Employee Who Doesn't Fit The ... Mold

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A recent federal district court decision shows the importance for employers to work through asserted employee health issues and document that they have done so. The case involves Resa O'Reilly, who was hired for a government job. Almost immediately after she began work, she began experiencing a number of physical symptoms – headaches, sinus pressure, eye pain and numbness. She experienced the symptoms only when she was at work. She was away from work for training for a few weeks without problem. As soon as she returned, so did the symptoms. She also happened to be pregnant at the time. She at first requested a relocation to attempt to relieve her symptoms, and requested that the building be tested for air quality. The request was denied the following day. She then learned the building had mold issues, and reiterated her requests, which were again denied. Supporting her requests with notes from two doctors did not help. She then filed this lawsuit. The employer moved to dismiss the case. In [this decision](#), the court denied the motion and held that the case could proceed. Of particular note to employers generally:

- O'Reilly's complaint sufficiently stated a basis for finding that she has a disability. As regular readers will know, since the passage of the ADA Amendments Act (ADAAA) about five years ago, it is not hard for an employee to satisfy this threshold. Few ADA cases are won on the basis that the employee does not have a disability, and the persistent symptoms alleged by Ms. O'Reilly will satisfy that threshold.
- Allegations that the employer did not give serious consideration to her requests supported the basis for her claim. A motion to dismiss is an early procedural maneuver, and further proceedings may in fact demonstrate the employer did give more serious consideration. Regardless, the court's analysis reminds employers to create a record of attempts to [work through ADA issues](#) needed to defend such claims.

Not all health conditions alleged to be caused by the work space will prove to be so, of course, but any such allegations should be taken seriously and addressed with the defense of possible future claims in mind.

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