

## Seventh Circuit Rejects EEOC's Claim Of Confidentiality Violations Under The Americans With Disabilities Act

November 26, 2012 | [EEOC, Employment Discrimination, Labor And Employment](#)



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In its opinion issued in [EEOC v. Thrivent Financial for Lutherans, No. 11-2848](#), the U.S. Court of Appeals for the Seventh Circuit affirmed the award of summary judgment to Thrivent Financial for Lutherans (Thrivent), and rejected the Equal Employment Opportunity Commission's (EEOC) arguments that Thrivent had violated the Americans with Disabilities Act (ADA) when it had revealed information regarding a former contract employee's migraine condition to a prospective employer. The Seventh Circuit's rationale hinged on the fact that Thrivent had not learned of the medical condition via a "medical examination and inquiry," as required by the ADA, 42 U.S.C. § 12112(d), but instead had informally learned of the condition from the employee himself when it simply had inquired as to why the employee was absent *without having any pre-existing knowledge of the employee's medical condition*. Despite having come out in favor of the employer, however, this decision serves as a reminder to employers that they should carefully consider all requests made to an employee/consultant in relation to absences or potential workplace issues that could stem from a medical condition, particularly when any pre-existing knowledge of such a condition could be found to create an intent on the employer's part to seek out more information pertaining to such medical condition.

The dispute arose after Gary Messier (Messier), a consultant for Thrivent pursuant to an agreement between his employer, Omni Resources, Inc. (Omni) and Thrivent, was absent from work and was asked by his supervisor at Omni to let them know why he was absent. At the time, neither Omni nor Thrivent had knowledge that Messier suffered from any medical condition. Messier, however, explained such absence by advising both Omni and Thrivent via an e-mail that he suffered from severe migraines that rendered him bed-ridden as a result of head trauma from a past automobile accident. Shortly thereafter, Messier discontinued his consulting arrangement with Thrivent. In the course of his job search, three prospective employers conducted reference checks and declined to hire him. Concerned over the information Thrivent might be providing, Messier hired a third-party to pretend to be a prospective employer, which then contacted Messier's prior supervisor at Thrivent for a reference check. During this call, Thrivent revealed that Messier suffered from medical conditions causing migraines and had not called/let Thrivent know when he needed to be absent due to such conditions.

After learning of such disclosure, Messier filed a charge with the EEOC, who found cause to believe a violation of the ADA had occurred. The EEOC

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thereafter filed suit against Thrivent alleging that Thrivent violated the confidentiality provisions of the ADA by revealing Messier's confidential medical information obtained from a medical inquiry to prospective employers of Messier. During summary judgment proceedings, the district court found that Omni's request of Messier to explain his absence did not rise to the level of a "medical inquiry" under the ADA because there are a large number of reasons an employee could be absent and an inquiry into same does not necessarily impute intent to request or acquire medical information. Accordingly, summary judgment was awarded to Thrivent.

On appeal, the EEOC abandoned its argument that the inquiry was a "medical inquiry," instead contending that the ADA's confidentiality provisions protected all employee medical information obtained through "job-related" inquiries. In interpreting the statutory language of the ADA itself, the Seventh Circuit flatly rejected the EEOC's broad definition of "inquiry" under the ADA, looking at the context in which the term was used overall and taking into account the relevant statutory heading entitled "Medical examinations and inquiries." Accordingly, the Seventh Circuit limited its interpretation of "inquiry" to encompass only those of a medical nature. Further, in light of Thrivent and Omni's lack of pre-existing knowledge of Messier's condition prior to its inquiry as to why he was absent, the Seventh Circuit was readily able to distinguish Messier's case from those in which an inquiry arose post-receipt of information suggesting a medical condition existed.