

## No Exposure To Allergens In The Workplace – Is There A Reasonable Accommodation Under The ADA?

March 6, 2014 | [Employee Health Issues, Labor And Employment](#)

It's common for employers to receive complaints from employees about allergens in the workplace. But what is an employer obligated to do when an employee's physician explicitly restricts that employee from having any exposure to an allergen that cannot be eliminated from the workplace? Well, let's put on our ADA hat. What are employers obligated to do? Oh yes, that's right - engage in the interactive process! Here's a real life example that may have some practical applications to situations you're currently facing.

In *Horn v. Knight Facilities Management-GM, Inc.* (Case No. 12-2688) (6th Cir. Feb. 25, 2014), the Sixth Circuit considered whether a janitor who was restricted to having "no exposure to cleaning solutions" was qualified for her position regardless of her disability (assuming, for argument sake, she was disabled). The Sixth Circuit said "no." There, the janitor-employee first presented a doctor's note that limited her exposure to chemicals to two hours per day. The employer provided the accommodation (despite the fact that as a janitor this employee had to use chemicals to perform many of her job duties, including cleaning restrooms). This accommodation did not do the trick, however, and the employee still suffered from the burning sensation in her lungs and throat that she initially complained of.

Next, the employee provided another doctor's note stating that she could have "no exposure to cleaning solutions." Faced with this broad restriction, the employer did what it was supposed to do – it sought clarification from the employee's doctor as to the true scope of the restriction. The doctor confirmed his earlier restriction - the employee must "be away from [the cleaning solutions]."

The employee proposed two accommodations – 1) eliminating restrooms on her cleaning route, or (2) providing her with a respirator. The Court found that "neither proposed accommodation is objectively reasonable because they both fail to comply with the physician-mandated restriction of 'no exposure to cleaning solutions.'" Indeed, the cleaning solutions were airborne in all of the facilities cleaned by the employer's janitorial staff and the doctor's restrictions did not limit the employee's exposure to breathing fumes from the chemical solutions; and thus naturally precluded the employee from using or touching cleaning solutions as well (so a respirator was not a solution). The Court found the issue was whether the employer could reasonably accommodate the restrictions by the employee's doctor. The Court said no. Employer prevailed.

So, what's the take away? If you have questions about a restriction, get clarification. And, make your decisions based on the restrictions as mandated by the doctor (not what the employee proposes that seems contrary to the doctor's advice).

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