

## Jury Gets To Decide: Are Prolonged Walking, Standing Essential Functions Of Employee's Job?

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A New York federal court has decided to take another look at whether prolonged walking or standing are essential functions of an employee's job. On Oct. 13, 2016, in the case of *Reyes v. Phoenix Beverages, Inc.*, the U.S. District Court for the Eastern District of New York [issued an order](#) that granted employer Phoenix Beverages' motion for reconsideration in part. In issuing the order, the court agreed with the employer's contention that the court had overlooked portions of testimony provided by the employee's supervisor in its original ruling on summary judgment which held that prolonged walking or standing were not essential functions of the employee's job. The court determined that a triable issue existed regarding whether prolonged walking or standing were in fact essential functions of the plaintiff's job. Since there was a genuine issue of material fact, the court ordered this question to be presented at trial to a jury. Concurrently, the court denied the employer's motion for reconsideration in all other respects, including a reconsideration of its holdings that the employer failed to comply with the [Family and Medical Leave Act's](#) (FMLA) notice requirements with regard to its specific fitness-for-duty certification requirement, that the company waived the judicial estoppel defense, and that the employee could proceed with his New York City Human Rights Law (NYCHRL) disability bias claim. Pretrial orders are due in early November. We will keep you updated on the new trial.

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