



## **News Alert: U.S. Supreme Court Allows Employers to Consider Job Danger to Applicant's Health in Refusing to Hire a Disabled Individual**

The U.S. Supreme Court just ruled in *Chevron U.S.A. Inc. v. Echazabal* that an employer may decline to hire a disabled applicant because his performance on the job would endanger his own health. This case will be described in more detail in next week's **WEB**.

## **HIV-Infected Dental Hygienist Ruled to be a "Direct Health Threat" to Patients: No ADA Protection**

The United States Supreme Court let stand an Eleventh Circuit Court of Appeals decision holding that an employer properly terminated a dental hygienist because his HIV-positive status posed a direct health threat to patients. In *Waddell v. Valley Forge Dental Assocs.*, the employee alleged that his termination violated the American with Disabilities Act ("ADA"). The Eleventh Circuit found that the hygienist's use of sharp instruments (such that the hygienist could be stuck or pricked while using the instruments), together with routine patient bleeding during dental procedures, created a significant health risk to patients of HIV transmission, thereby justifying the termination. Because of the catastrophic effects of contracting HIV, the court opined that the employer's showing of possible HIV transmission was sufficient to establish a direct threat even though actual instances of transmission were nonexistent, and the odds of transmission were admittedly small. Employers are cautioned that such "direct threat" cases are rare and require strong facts to justify termination of an employee based on disability.

## **Employer Properly Withdrew Employment Offer to Epileptic Applicant for Forklift Job**

In another ADA case, a Minnesota federal district court dismissed an applicant's ADA claim arising out of the employer's withdrawal of a job offer allegedly after learning that his epilepsy prevented him from safely operating a forklift. In *Schuler v. SuperValu, Inc.*, the court held the employer could properly reject the plaintiff because his epilepsy rendered him incapable of using or working around heavy equipment. However, other courts have ruled that, where the employee's epilepsy is under control by medication, the employer must carefully evaluate whether the employee is able to safely perform the job with or without reasonable accommodation.

## **IBM Workers Get Trial Date for Unusual Chemical Exposure Claims**

The Santa Clara Superior Court recently set a January 2003 trial date for a suit brought by a group of former IBM employees suing IBM and several chemical companies because they were exposed to unsafe "clean room" chemicals during the 1960s. Plaintiffs allege that defendants failed to adequately warn them about, or to protect them from the harmful effects of such chemical exposure. The plaintiffs allege they suffered a variety of serious cancers and other ailments. IBM reportedly already settled a related lawsuit involving the birth

defects of two employees' offspring. While the employees' remedy against an employer for such work-related illness or injuries is generally limited to workers' compensation, employees are permitted to bring tort claims where the employer has fraudulently concealed serious health and safety risks.

## **Cadence Contractor Terminated After Israel Deports Him for Assisting "Terrorists"**

As recently reported by the press, Cadence Design Systems recently terminated a contractor who was deported by Israel for delivering food to armed gunmen and other Palestinians occupying Bethlehem's Church of the Nativity. James Hanna, a contract engineer working for Cadence in Munich, Germany, spent 10 days in Israel assisting International Solidarity, a group dedicated to non-violent resistance of Israeli occupation of the West Bank and Gaza. Upon his return to work in the Munich office, Cadence terminated Hanna. Defending the termination, Cadence stated that Hanna's job was to support customers in Israel. Because Hanna could not re-enter Israel as a result of his recent deportation, he could no longer perform his principal responsibilities. Although, in general, California prohibits terminating an employee because of political activities, the inability to perform the job (even as a result of such political activity) should constitute a legitimate ground for termination.