

# The Bennett Law Firm

## *Client Update*

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Portland, ME (207) 773.4775 / Boston, MA (617)973.1550



### **Federal Jury Awards Multi-Million Dollar Verdict to Pharmacist with Needle Phobia who Requested Reasonable Accommodation and Why Periodic Training Can Help**

On January 26, 2015, a federal court jury in upstate New York awarded over \$2.6 million in damages to Christopher Stevens, a pharmacist Rite Aid fired in 2011 after its human resources managers ignored his explanations and communications from his doctor explaining his disability and requesting an accommodation to excuse him from immunization training due to severe phobia of needles. Notably, the verdict included \$900,000 in emotional distress damages and zero in punitive damages showing both the sympathy that the jury had for the pharmacist and its struggle to acknowledge Rite Aid's business judgment and attempted efforts to be legally compliant.

Stevens had been a pharmacist since 1977 in Utica, New York when Rite Aid purchased his employer 2007. He appears to have been a high performer and was named "Favorite Pharmacist" in both 2009 and 2010. Soon after Rite Aid assumed operations, it sent out an email stating that all pharmacists would be required to attend training and thereafter would be expected to administer immunizations, such as flu shots, by injection. Within a week of the email, Stevens provided human resources with a note from his doctor explaining his diagnosis of trypanophobia and why he could not safely administer injections. In addition, Stevens wrote a letter requesting a reasonable accommodation for his phobia and suggested that 8 nearby stores could help administer vaccinations instead.

The Rite Aid HR department did not respond to the accommodation request but sent him an email informing him that he was scheduled for immunization training in May of 2007. When Stevens did not attend the training, the HR manager asked for clarification of the doctor's note because it was difficult to decipher the doctor's writing. Stevens typed out the doctor's letter that explained that he could not safely administer injections. When faced with being injected himself or having to inject another, he experiences extreme sweating, a sudden drop in blood pressure, shaking and anxiety. He received no response. It was not until 2011 however, that Rite Aid actually required its pharmacists to provide immunizations. By that time, Rite Aid had

promoted Stevens to manager.

In August 2011, Rite Aid executives unexpectedly visited Stevens' store and brought a fill-in pharmacist with them. They told him that he would be terminated if he did not produce another doctor's release within 24 hours and complete the immunization training. He again explained his phobia, what occurs when he is faced with needles and suggested that other pharmacists under him or at other locations could do the injections which Rite Aid previously had not required. Rite Aid fired him the next day.

At trial Rite Aid began its defense by claiming that trypanophobia was not a legitimate disability and therefore it should not have had to make any accommodations. Rite Aid argued that Stevens' needle phobia did not limit major life activity and did not seem to be aware that changes made to the Americans with Disabilities Act in 2008 included diagnoses that impact major bodily functions such as would have affected him if faced with having to perform injections.

Rite Aid then argued that requesting to be excused from an essential function of the job was not a request for a reasonable accommodation. It pointed out that employers need not excuse an employee with a disability from performing an essential job function but instead find a way for the employee to manage the task. Unfortunately, Rite Aid HR staff could demonstrate no effort on their part to communicate with Stevens outside of directives about attending training. Rite Aid could produce no responses to his letters regarding requests to work with them and take on other responsibilities other than injections. Rite Aid had claimed that providing vaccinations was an essential job function although it had only just imposed that new task. As the Pharmacy Manager, Stevens was responsible for pharmacy business and while administering injections and performing immunizations were among his essential job functions, these duties were not specifically identified as among those the Pharmacy Manager had to perform personally.

The HR manager that had received Stevens' letter had decided on his own not to contact counsel and although he had no expertise in psychological disorders made a decision that the diagnosis was not a disability.

In general, an employer is better off not parsing a gray area over whether a particular condition is technically a disability. The better practice is to work with the employee to determine if there is something that might allow him to get the job done. In addition, when an employer does not require employees to perform essential job functions for a long period of time, it needs to be more considerate and deliberate when it decides to require the function be performed on a going forward basis. A long-time, valued employee was treated disrespectfully and the company was faced with a lawsuit that could have easily been avoided with a little common sense and a phone call to counsel.

To find out how you could benefit from scheduling an updated HR training on how these issues arise and how your personnel can spot them, please contact Peter Bennett ([pbennett@thebennettlawfirm.com](mailto:pbennett@thebennettlawfirm.com)) or Rick Finberg ([rfinberg@thebennettlawfirm.com](mailto:rfinberg@thebennettlawfirm.com)).