

# Would a Deaf Lifeguard be 'Qualified' Under the ADA?



What would you do if you were hiring a lifeguard for a community wave pool and the applicant was deaf, but he was also certified as a lifeguard? A new court ruling this month shows how mistakes made in assessing the applicant's medical condition can leave an employer drowning in litigation ...

**Case in Point:** Nicholas Keith, 22, was born deaf and communicates using sign language. He also uses a cochlear implant that helps him detect noises, such as whistles and people calling for help. Keith received his junior lifeguard certification and then successfully completed lifeguard training. (A Michigan county provided a sign-language interpreter to relay verbal instructions to Keith during both training programs.)

Keith then applied for a lifeguard position at the county's wave pool, requesting that a sign-language interpreter be present to relay verbal directions during staff meetings. The county offered Keith the job, conditioned on his passing a pre-employment physical. The doctor failed him, citing his inability to hear. Plus, the county's safety and risk management consultants expressed concerns over Keith being unable to do the job, despite numerous accommodations the county was offering. So the county rescinded the job offer.

Keith sued the county, claiming he was qualified under the Americans with Disabilities Act (ADA) because he could do the essential elements of the lifeguard job with a reasonable accommodation. The county disagreed, saying that hearing is an essential element of the job.

A lower court sided with the county. But on appeal, the case was reversed and sent to a jury trial. The appeals court said that whether a job function is "essential" under the ADA is typically a fact-based question for a jury to decide. Several experts for Keith had testified that the ability to hear is not essential to the successful performance of lifeguard duties because swimmers in distress use hand motions to signal for help.

Plus, as Keith's experts noted, the world record-holder for most lives saved by a lifeguard is by [Leroy Columbo](#)—a deaf man.

## 3 Lessons Learned ... Without Going to Court

**1. Make sure the doctor examines the applicant, not just the chart.** In this case, the doctor only reviewed Keith's chart, he didn't see him in person. The court said that's a " cursory medical examination that the ADA was designed to prohibit." The ADA requires an employer to perform an individualized inquiry of a worker who claims to be disabled to determine if the worker's claimed disability renders him or her unable to perform the job.

**2. Make sure your consultants meet the applicant to make an individualized inquiry and**

**assessment.** This requirement flows from the statute's "underlying objective" of ensuring that individuals with disabilities are judged according to their abilities, not based on fears, biases, or ignorance. Also, make sure all consultants have the experiences and qualifications to be experts.

**3. Engage in a timely good-faith interactive process to consider reasonable accommodations.** The court reminded employers this is their legal obligation once there is a known disability. It's a back-and-forth dialogue to determine any modification or adjustment to a job, the job application process, or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process, perform the essential functions of the job, or enjoy the benefits and privileges of employment.