

Disability and constructive discharge linked

Disabled employees who quit when their employer refuses to consider possible reasonable accommodations may have a constructive discharge claim under the ADA. It's another reason to be sure to seriously consider every request for accommodations, using the ADA's interactive process.

Recent case: Jenette worked as a teacher and had been diagnosed with major incontinence. Her condition impairs bowel function and means she must have ready access to a restroom at all times. She requested an accommodation of using anti-diarrhea medicine at work and being allowed to sometimes sit while teaching. For five years, the accommodation worked.

Then a new administrator arrived at school. Soon, Jenette was called into a meeting to discuss her condition. The new administrator told her she had to stand while teaching and refused to discuss any accommodation. He threatened to discipline her if she disobeyed the order. For the next year, Jenette was repeatedly called into meetings and warned that ignoring the order to stand would mean potential termination.

She eventually retired and then sued, alleging that her employer had refused to engage in the interactive accommodations process and had essentially given her no choice but to quit. Without access to a bathroom and being able to sit as a way to control her bowels, she argued, meant she was unable to work.

The court said her case could go to trial, ruling she had made out a claim of constructive discharge. A reasonable employee under similar circumstances would have no choice but to quit; refusing to even entertain an accommodation violates the ADA. (*Busch v. Oswayo Valley School District*, No. 1:15-CV-239, WD NY, 2016)

Final note: Always consider how your actions will look to a jury. It's usually better to at least consider accommodations instead of doubling down on an initial refusal.