

# Disabled employees entitled to return to work, but not someone else's job

Disabled employees seeking to return to work may be entitled to an open position for which they are qualified. But when is a position considered open?

For example, what happens if another worker is out on leave? Is that position open?

**Recent case:** Imelda was a technician who used a soldering iron and a microscope to solder components onto printed circuit boards. She helped with other positions on the production floor when there was a slowdown in soldering work.

A co-worker, Lilliana, worked as a mechanical assembler, taking the completed circuit boards and installing them in larger assemblies. Her job paid less and required less training.

Imelda injured herself at work and was out on workers' comp leave from September 2013 until she sought to return as a disabled employee in late 2014. By that time, the company had suffered a decline in sales and didn't need a solder technician. Imelda was not offered a job.

While Imelda was still out, Lilliana suffered an off-the-job injury. A temp filled Lilliana's position until she returned to work in January 2015.

Imelda sued, alleging that she should have been reasonably accommodated with an assignment to Lilliana's position.

The court dismissed Imelda's lawsuit. It reasoned that the mechanical assembler position wasn't "open" when Imelda was ready to resume working. Lilliana still held that position and eventually returned. Therefore, no accommodation was required. (*Godoy v. Universal Switching*, Court of Appeal of California, 2018)