

Accommodation requires employee's good faith

An employee who makes a request for an ADA reasonable accommodation and is punished for doing so may have a retaliation claim. But she has to actually believe in good faith that the accommodation she is requesting will work.

If she knows that the accommodation won't work, then she does not have a retaliation case.

Recent case: Judy was a bill collector for a large hospital. The job required lots of sitting, and she had few opportunities to move around during the workday.

Judy needed back surgery so she took several weeks of FMLA leave. After she returned to work, she broke her leg. She was off work for two weeks. At that point, the hospital told Judy she was out of leave.

Judy then requested a reasonable accommodation in order to return to work. She said she would be able to return if she could work from a wheelchair. She said she would just need help getting in the building and to the restroom. Her request was turned down and she was terminated.

She sued, alleging failure to accommodate, as well as retaliation for requesting an accommodation. A lower court tossed out her case, so she appealed.

The 8th Circuit Court of Appeals upheld the dismissal. It reasoned that by her own testimony, Judy knew the accommodation she had requested would not work. She testified under oath that she could not sit at all for any length of time. She could only lie in bed most of her waking time.

The court concluded that her request for an accommodation—using a wheelchair at work—had not been made in good faith. That made her retaliation case untenable. (*Shotwell v. Regional West*, 8th Cir., 2018)