Employment Law Monthly - May 2013

May 28, 2013

A Silent Cry For Help: Reliance On A Third-Party Evaluator Could Result In Liability Under The ADA

By Phillip C. Bauknight

Recently, the Sixth Circuit rendered a decision in Keith v. County of Oakland, No. 11-2276 (6th Cir. 2013) holding that the ability to hear may not be an "essential function" of a lifeguard's job duties. In Keith, the Sixth Circuit also suggested that, should an employer rely on the opinion of a third-party evaluator to determine whether a disabled person can be accommodated, it would be wise to use an evaluator who has experience with the specific disability at issue as it relates to the job in question. Reliance on generalized conclusions, absent consideration of the actual disability and job at issue, leaves employers unguarded against potential liability under the American with Disabilities Act, 42 U.S.C. § 12101.