

CLIENT NEWS BRIEF

No FEHA Violation for Releasing Employee Who Was Unable to Perform Essential Job Functions

In *Nealy v. City of Santa Monica* (January 21, 2015) 2015 Cal.App. Lexis 139, the Second District Court of Appeal affirmed a judgment in favor of the City of Santa Monica (City) finding that because an employee was unable to perform the essential job functions even with reasonable accommodations, the City did not violate the California Fair Employment and Housing Act in releasing the employee from employment. Specifically, the court found the City was not required to eliminate an essential function of a job or reassign the employee to a position for which he was not qualified in order to accommodate him.

Tony Nealy worked for the City as a solid waste equipment operator. Mr. Nealy injured himself while on the job and subsequently took multiple injury-related leaves of absence. He was eventually released to return to work with restrictions. Mr. Nealy expressed his desire to return to work in his former solid waste equipment operator position. The City and Mr. Nealy participated in multiple meetings to engage in an interactive process. During this process, the City determined it could not place Mr. Nealy in this position because there were essential functions of the solid waste equipment operator position that Mr. Nealy could not perform with or without accommodations. However, the City did identify alternative vacant positions for which Mr. Nealy could be considered. Although Mr. Nealy applied for a couple of these vacant positions, the City ultimately denied his applications because he was not qualified to meet the requisite application criteria. The City subsequently ended Mr. Nealy's employment.

Mr. Nealy filed a lawsuit against the City alleging disability discrimination, failure to provide reasonable accommodation, failure to engage in an interactive process, and retaliation. The trial court dismissed all allegations and the Court of Appeal affirmed.

The court found that Mr. Nealy could not perform the essential functions of the solid waste equipment operator position even with accommodations. The court found that the City was not required to eliminate an essential function of the position, despite Mr. Nealy's request that the City do so to accommodate him. The court further found that while a reasonable accommodation may include reassignment to a vacant position, the City was not required to reassign Mr. Nealy to a vacant position for which he was not qualified.

This case affirms the importance for employers of engaging in a meaningful interactive process with employees, which may include considering alternate job placements for the employee. However, the court recognized that it would be an unreasonable accommodation to require employers to eliminate essential functions of positions or assign employees to positions for which they are not qualified.

For further information about this case, accommodating employees, or the interactive process, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).

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