

Employer's "100% Healed" Policy Did Not Support "Regarded as" Disability Claim

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A long-haul truck driver requested a transfer to a local driving route for personal reasons. Shortly after transferring, the driver discovered that the increased lifting requirements of the local position aggravated a preexisting back injury. Consequently, the driver requested a transfer back to a long-haul position. His request was denied based on the requirements of the collective bargaining agreement. As a result, the driver went on medical leave. The driver returned with restrictions from his treating physician that prevented him from performing the physical work required as part of the local route and stating that he could only work as a long-haul driver. The employer informed the driver that he could not return to work until he was released without restrictions. The driver sued the employer, alleging that the employer's "100% healed" policy established that the employer regarded him as substantially limited in the major life activity of working in violation of the American's with Disabilities Act (ADA). The U.S. Court of Appeals for the Seventh Circuit rejected this argument because the driver failed to establish that the employer believed that he was unable to work in a class of jobs or a broad range of jobs. Absent such a showing, the driver could not establish that the employer regarded him as disabled simply because it required him to establish that he was fully able to perform the specific requirements of the job he was performing for the employer. While implementing a "100% healed" policy may not serve as a *per se* violation of the ADA, employers must carefully apply such a policy to ensure that it does not trigger liability and should consult with counsel regarding any concerns.

Powers v. USF Holland, Inc., No. 10-2363 (7th Cir. Dec. 15, 2011)

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Topics

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