

## Permanent Lifting Restrictions And The ADA

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Permanent lifting restrictions can be a headache for employers when navigating through the accommodation process under the Americans with Disabilities Act (ADA). In determining the reasonableness of accommodating these restrictions, employers should review the essential functions of the position, whether it has provided similar accommodations, and whether such an accommodation could be provided permanently. All of this can be time consuming and difficult and can result in litigation if done wrong. However, a recent decision by the 7th Circuit Court of Appeals provides some encouragement to employers and outlines ways in which an employer can determine if the person is a qualified individual with a disability and therefore entitled to such accommodations. In [EEOC v. AutoZone, Inc., No. 15-1753 \(7th Cir., Jan. 4, 2016\)](#), the EEOC filed suit against AutoZone, Inc., on behalf of Margaret Zych, claiming disability discrimination for failure to accommodate Zych's 15-pound permanent lifting restriction and for terminating her because of that restriction. Ultimately, the EEOC lost at trial because the jury determined Zych was not a qualified individual with a disability. The EEOC also lost in its motion for a new trial. The EEOC appealed and one of its arguments was that lifting was not an essential function of Zych's position, which was Parts Sales Manager (PSM) and instead it was only a marginal function. The EEOC pointed to one other employee (who held a different position than Zych's position) as evidence. The 7th Circuit disagreed and outlined AutoZone's significant evidence demonstrating heavy lifting was an essential function. AutoZone's evidence included testimony from former PSMs who worked in the same location in which Zych worked and explained the regularity and frequency in which heavy lifting occurred. AutoZone also presented the PSM job description, which clearly identified heavy lifting as an essential function of the position and which was consistent with the witness testimony. The EEOC attempted to mitigate the lifting requirements by arguing the "team concept" that AutoZone included in its performance reviews of employees. Specifically, the EEOC pointed to AutoZone's employee handbook encouraged employees to "ask for help when needed" if lifting heavy objects. The EEOC also relied upon AutoZone's performance reviews, which included an evaluation of the employee's "teamwork" and whether the employee "helps the team succeed." The 7th Circuit flatly rejected those arguments. Instead, the court stated it is "common practice for employers to promote cooperation and teamwork amongst their employees." The 7th Circuit stated that the employer's promotion of team work does not cause a distribution of labor in which Zych could substitute and reassign the essential functions of her job as PSM. The *AutoZone* decision is a good guideline for employers when faced with accommodating permanent restrictions that infringe upon the essential functions of a job. Employers should carefully review the written job description and confirm that the essential functions truly are essential and not just marginal duties. Employers should also consider examining the duties of current and prior employees in the same position and if those duties match the written job description. Consistency is key when handling these types of issues.

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