

## Don't Talk About Employee's Disability – Even In A Sports Analogy

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We often counsel employers to focus on an employee's ability to perform the job rather than the fact of an employee's health issues when explaining adverse employment decisions. I love a good sports analogy, but even such an analogy probably should not divert us from this best practice. In a recent decision from the U.S. District Court for the Northern District of Illinois, the judge denied a university's motion for summary judgment on a professor's disability discrimination claim when the professor's Dean wrote the following in recommending that the contract of a professor who had contracted a lung disease not be renewed:

*Here's how [I] view it, and I will argue by analogy. Suppose a star major league baseball player signs a multi-million dollar five year contract. Further suppose that two years into the contract the player sustains, through no fault of his own, a career-ending injury. Certainly the team is obliged to still pay him until the end of his contract — presumably his agent put in language to that effect. But when the five years are up, is the team obliged to offer him a new five year contract when he can no longer play the game at the major league level? Clearly not. The same would be true here, in my view: nowhere does Dr. Matland claim his illness is going to ameliorate, that renewed high productivity can be expected. So I do not see an injustice in passing the responsibilities of the... professorship on to someone else.*

Even though a faculty committee had made the same recommendation looking solely at the professor's academic work, the court pointed to the Dean's memo as evidence upon which a jury could rely in finding for the professor on his disability discrimination claim because it could be read as saying the illness was the reason for the termination decision.

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