

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

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**William A.
Nolan**

Partner
Columbus
Managing Partner

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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