

## Easy Come, Easy Go: Appeals Court Reverses \$2.6 Million Award In ADA Case

March 24, 2017 | [Employment Lessons, Labor And Employment](#)



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In a helpful case for employers, the Second Circuit Court of Appeals reversed a \$2.6 million jury verdict in *Stevens v. Rite-Aid Corporation* (Case No. 15-277), holding that the employer could not reasonably accommodate a pharmacist's fear of needles. The case began in 2011, when Rite-Aid started requiring that all of its pharmacists be able to administer immunization injections to customers. But, the new job requirement presented a problem for Rite-Aid pharmacist Christopher Stevens; he suffers from the fear of needles, known technically as trypanophobia. Faced with required immunization training, Stevens reported his phobia to Rite-Aid and asked for an accommodation. Rite-Aid engaged in the interactive process, and considered whether there were any accommodations that would enable Stevens to perform injections. Stevens' doctor reported that Stevens could not safely administer injections to patients, as he might faint. Rite-Aid eventually concluded that the ADA did not apply to Stevens' phobia, it was not required to accommodate him, and that he would lose his job if he failed to complete immunization training. Stevens refused the training and Rite-Aid fired him, triggering a lawsuit for violations of the ADA. At trial, the jury sided with Stevens and awarded him \$2.6 million in damages. Rite-Aid appealed the verdict and on appeal, the Second Circuit, reversed. The Second Circuit focused on whether Rite-Aid was obligated to accommodate Stevens' phobia. It reasoned that the ADA prohibits discriminating against an individual who can perform a job's "essential functions," which are determined by, among other things, the employer's description of the job and how it actually is performed in practice. In this case, everyone agreed that Rite-Aid had made a business decision to require pharmacists to perform immunizations, and that immunization -- through injections -- had become an essential job requirement for a Rite-Aid pharmacist. Next, the Second Circuit examined the slew of the proposed accommodations from the employee, Stevens. Stevens first suggested he should have been permitted to continue in his role as a pharmacist without having to perform injections. The appellate court rejected this because it would not be a reasonable accommodation to eliminate an essential function of a job. Stevens then proposed that Rite-Aid should have offered him desensitization therapy to get over his phobia. This also was shot down because employers are not required to offer medical treatment to reasonably accommodate an employee. Lacking any evidence of a viable reasonable accommodation at the time of his discharge, the Second Circuit also rejected Stevens' argument that Rite-Aid had failed to engage in the interactive process. In the end, the appellate court concluded that no juror reasonably could conclude that Stevens was qualified to perform the essential function of his job with or without a reasonable accommodation, and

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remanded the case back to the trial court for the entry of judgment in favor of Rite-Aid. The case provides some useful lessons for employers.

- First, just because a jury awards a staggering verdict for the plaintiff does not mean that all is lost. Employers, like Rite-Aid in this case, still can win a victory on appeal.
- Second, just because an employee demands an accommodation does not mean he or she is entitled to one. The company won because it was able to show that it had adopted specific job requirements, was consistent in implementing those requirements and provided undisputed testimony supporting not only the uniform implementation of the new requirements but also their importance to the company's business model.
- Finally, equally important is what was missing from this case: there was no evidence of employees who refused to administer injections but were allowed to keep their jobs. In short, being able to prove job duties and responsibilities and sticking to them over time will help an employer establish the essential functions of a job, and could – like this case – help save the company a ton of money.