

## Employer Changes Mind, Denies Accommodation To Deaf Applicant, Heads To Jury

September 1, 2015 | [Employment Discrimination, Labor And Employment](#)



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A federal appellate court ruled that an employer that rescinded an offer of employment to a deaf applicant for a position monitoring plasma donors does not get summary judgment on the applicant's Americans with Disabilities Act (ADA) failure to accommodate claim, and the case should proceed to a jury. The [court](#) found the applicant presented two potential accommodations that would overcome her inability to hear audible alarms from donors the reasonableness of which must be determined by a jury – (1) installing visual or vibrating alerts or (2) providing call buttons to donors.

While it is not technically relevant to the ADA legal questions at issue, one must wonder whether the circumstances of the denial of employment entered into the court's thinking: The plaintiff was interviewed by multiple staff members and made it clear that she was deaf and communicated by reading lips and received an offer of employment. It was only when she reported to work that the offer was rescinded. Certainly one takeaway for employers generally is that potential accommodation issues and concerns must be flagged and addressed as early as practicable. Maybe a cleaner process would not have changed the outcome, but the appearance that the employer can't make up its own mind certainly does not help lead one to the conclusion that the case should not reach a jury.

While we have written before about the perils to employers of failing to engage in the [interactive process](#) in accommodation situations, it does not appear that this is a case where an employer shot itself in the foot by moving too quickly to a decision that an employee could not be accommodated. Rather, the employer just – in the court's view – may have gotten it wrong in concluding accommodations were not reasonable. Unless the parties settle the case (always a possibility), a jury will decide.

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