

United States: "No Urine, No Job!" – New EEOC Lawsuit

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The pressure is on — you are in a football stadium bathroom with a line of impatient fans behind you who have been drinking beer for hours and are muttering menacingly that you are taking too much time. You freeze up.

How about a situation where you *had* to produce a urine sample as part of a routine drug testing when applying for a job?

Is Paruresis a Disability?

Way back on [October 4, 2011](#), we noted that this condition, if chronic, actually has a name — it's called "paruresis," or "shy bladder" or "bashful bladder." It is, simply, a bladder that has performance anxiety when the pressure is on, whether in a public situation or with others around. It's a bummer, to be sure, but is it a disability for purposes of the ADA if you are not hired because you can't show a clean drug test because of it?

We received a lot of mail from sufferers and do not doubt their distress. However, without minimizing the condition, nonetheless what "major life activity" (under the ADA) is substantially limited by possessing a shy bladder – urinating in public? Drinking beer at a Giants game? (**Note:** On [May 24, 2013](#), we published a comment from an anguished reader who makes out a strong case for paruresis as an ADA-disability).

We wrote on [May 14, 2013](#) that in 2011 the EEOC considered these issues, published an [informal opinion letter](#), but came to no definitive or clear conclusion, which led us to say: "Stay tuned because we will no doubt see such a fact situation hit the courts soon enough and learn more."

Can Paruresis Be Reasonably Accommodated?

A lawsuit was filed shortly thereafter: an applicant for a position at Iowa Methodist Medical Center was refused hiring because she could not complete the urine test – yep, paruresis. She sued under the ADA claiming that the Medical Center failed to make a reasonable accommodation for her alleged disability; she claimed that she had always managed her condition by using single-stall restrooms or by running water to cover the sound of her urinating. Her court filing stated that if she “cannot flush the toilet or run the water in the sink, she is generally unable to urinate in a public restroom.”

Should, or could, she have been accommodated without undue hardship by letting her turn on the sink?

Is An Inability To Provide A Urine Specimen Because Of Kidney Failure Grounds For Refusal To Hire?

A case [just filed](#) by the EEOC in federal court in Maryland addresses an issue similar to the paruresis situation, except that the failure of the job applicant to provide urine was not due to paruresis but due to a disability recognized under the ADA. The EEOC sued Kmart for allegedly refusing to hire an applicant who could not provide the required urine sample – not because of a shy balder but because he suffers from kidney failure and undergoes dialysis.

A disabling condition to be sure, and he duly requested an accommodation — to participate in other types of drug testing which do not require urine collection, such as blood or hair testing. It is alleged that without discussing with the applicant possible alternatives to the urinalysis, the hiring manager told the applicant two weeks later that he could not be hired because Kmart's policy required a complete urinalysis.

Should, or could, he have been accommodated without undue hardship by letting him take an alternative test?

One reader wrote to us a while back apropos the Iowa shy bladder lawsuit: "I can understand the person being unable to urinate with anyone else in the room, but I think the employer can overcome the problem. Medical providers have what they call 'top hats' — plastic things that sit across the toilet and collect urine. The employer can rig the toilet with one of these. Then, they can pat down the person before leaving her to provide the sample. It'd be more time-consuming, but it can be done."

Takeaway: Even if a "shy bladder" is not considered a disability, which issue has not yet been definitively addressed, nonetheless there seem to be cheap and easy ways to accommodate a person with paruresis, so employers should not put themselves in a situation where they are subject to suit. In the case of the applicant with renal failure, this advice seems to be even more appropriate.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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