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An important health care law update from the law firm of Jackson Walker.

**March 18, 2011**

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## EEOC: Hospital Cannot Refuse to Hire "Latex Glove Allergic" Employees

By **Lionel M. Schooler** and **Jed Morrison**

Just when you thought you had heard it all when it comes to discrimination claims, it has been recently reported that a California hospital system settled a discrimination suit involving their refusal to hire workers who were severely allergic to latex. The suit was originally filed by the Equal Employment Opportunity Commission (EEOC) alleging discrimination in violation of the Americans with Disabilities Act.

John Muir Health, which admitted no liability in the settlement, is paying about \$340,000 to resolve the monetary damages component, and further agreeing to special procedures in its hiring practices to resolve the procedures component of the case. The EEOC claimed that John Muir's campuses in Walnut Creek and Concord, California, in 2004 refused to hire seven nurses and one lab technician who were believed to have had severe latex allergies that prevented them from working at the facilities. The individuals' offers of employment were withdrawn after independent doctors hired to conduct pre-employment screening determined that the applicants had severe latex allergies.

Under the settlement consent decree, which was approved March 15, 2011, by the U.S. District Court for the Northern District of California, John Muir agreed to (i) pay \$340,000 to be apportioned among the named individuals whose employment offers were rescinded; (ii) devise new policies regarding applicants and employees; (iii) develop training for determining whether a latex-related work restriction can be accommodated; and (iv) train managers in a process to prevent discrimination.

In addition, new-hire candidates or employees who test positive for latex allergy shall now be referred to an allergist, paid by the hospital, who shall determine what workplace restrictions, if any, are recommended.

Consider yourself warned! Although the settlement is only binding on the parties to that case, hospitals (and presumably other EEOC-covered health care entities) should take precautions to not just automatically refuse to hire "latex allergic" job applicants.

For more information, contact **Lonnie Schooler** at [lschooler@jw.com](mailto:lschooler@jw.com) or 713.752.4516 or **Jed Morrison** at [jmorrison@jw.com](mailto:jmorrison@jw.com) or 210.978.7780.

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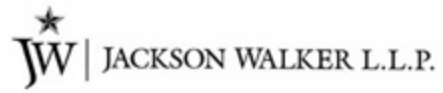
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