

## Nealy v. City of Santa Monica: Disability Discrimination Claims Were Properly Dismissed On Summary Judgment

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**Tony Nealy** worked as a solid waste equipment operator for the **City of Santa Monica** before injuring his knee in July 2003 while moving a large bin full of food waste. Nealy was temporarily totally disabled due to the injury until 2005 when he was released to do "light duty" work after which time he was reassigned to a groundskeeper position. A year later, Nealy again injured himself on the job (this time a lower back injury) and never returned to work again. Over the next several years, Nealy and the City had several "accommodations meetings," which did not result in an offer of a job for which Nealy could perform the essential functions with an accommodation. Finally, in 2010, Nealy submitted an application for a job as a city planning staff assistant, but the City determined that Nealy did not meet the necessary qualifications for the position. The City then sent Nealy a letter stating it was unable to provide him with reasonable accommodation into an alternative position because he was not minimally qualified for the only position available at the time that was not a promotion.

Nealy exhausted his administrative remedies and filed a lawsuit against the City, alleging disability discrimination, failure to reasonably accommodate a disability, failure to engage in the interactive process and retaliation. The trial court granted summary judgment in favor of the City, and the Court of Appeal affirmed. The Court first affirmed summary judgment based on the statute of limitations and the inapplicability of the "continuing violation doctrine." The Court also affirmed summary judgment based on evidence that Nealy could not perform some of the essential functions of the solid waste equipment operator, with or without reasonable accommodation, and that the City was not required to eliminate essential functions of the job (e.g., heavy lifting and kneeling) as part of a reasonable accommodation. The City also was not required to "provide an indefinite leave of absence to await possible future vacancies" in jobs Nealy might be able to perform. The Court also affirmed summary adjudication of the claims for failure to engage in the interactive process (the City met with and informed Nealy about its vacant positions) and retaliation (Nealy's exercise of his right to request

reasonable accommodation was not protected activity within the meaning of the statute). *Compare Nigro v. Sears, Roebuck & Co.*, 2015 WL 774633 (9th Cir. 2015) (summary judgment in favor of employer in disability discrimination case reversed, based principally upon employee's own "self-serving" testimony).

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