

# Recent EEOC Settlements Serve as Reminder to Employees to Offer Reasonable Accommodations for Employee Drug Tests

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While drug testing policies are becoming commonplace, employers must remember that they can violate the Americans with Disabilities Act (ADA) if reasonable accommodations are not provided, as a recent decision in a Maryland federal court demonstrates. In January, Kmart settled an EEOC suit over its alleged discriminatory urine drug test policy. The lawsuit was based on Kmart's revoking a job offer to a disabled man, Mr. Cook, because he could not provide a urine sample for a "pre-employment" drug test. Mr. Cook's end-stage renal disease prevented him from providing a urine sample. Although he expressed a willingness to take a test if Kmart could provide either hair, blood, or other non-urine forms of testing, Kmart refused to provide an accommodation, insisting that all new hires, including Mr. Cook, complete the standard urine test. Ultimately, Kmart denied Mr. Cook's employment because he could not complete the urinalysis.

In Mr. Cook's case, Kmart's insistence on a urine test ran afoul of the ADA, which requires employers to provide reasonable accommodations, including during the application and hiring process, unless the employer can show it would be an undue hardship. In settling the matter, Kmart agreed to pay Mr. Cook \$102,000 and agreed to revise its drug-free workplace policy and pre-employment testing policy to include a description of its obligation to provide a reasonable accommodation to employees or applicants in the testing processes. *See E.E.O.C. v. Kmart Corp.*, No. GJH-13-CV-2576, 2014 WL 5320957, (D. Md.).

Similarly, in October 2014, Walmart settled a lawsuit and agreed to pay \$72,500 to a job applicant who was denied a position because her end-stage renal disease did not allow her to take a drug urinalysis test. *See E.E.O.C v. Wal-Mart Stores East, LP*, 14-cv-00862, 2014 WL 6608585 (D. Md.).

The takeaway from these cases is that employers must be aware of their obligation to provide reasonable accommodations for pre-employment drug testing. Employers should remember hair, blood, or other non-urine forms of testing provide substantially similar results as urine drug testing. Instead of resisting these accommodations, employers should readily provide them as these recent EEOC lawsuits suggest.