



## Does injury before starting new job affect your status?

[by Michael Kinsman]

Amy Mitchell interviewed well a few weeks ago and was hired on the spot for a job as a claims representative for the Automobile Club of Southern California.

Early in September, she gave notice to the Newport Beach investment firm where she worked, and was eager to move to San Diego to be reunited with her boyfriend. She'd been looking for work there for two years.

Then, she fell while shopping, injuring her knee. It required surgery, and she was told she would have to keep weight off it for four weeks. She asked the Auto Club if she could delay her start date by two weeks.

At first, she was told by her employer that it couldn't wait, but within days she was told she would be welcome on the payroll. She just started the job last week.

"I didn't think it was right that I could be given job offer in a letter and then have it taken away because I was hurt," says Mitchell.

The Auto Club admits that the manager who initially rescinded the job offer wasn't following company policy. "It's unfortunate that it happened, but it's really not company policy," says Carol Thorp, an Auto Club spokeswoman.

Mitchell's experience brings up questions about the job-search process and just how much protection an individual has during that process.

There are state (California Department of Fair Employment and Housing) and federal (Equal Employment Opportunity Commission) guidelines that protect job seekers from various forms of job discrimination, both before they get a job and after they are on it.

And there is the Americans With Disabilities Act, which prevents discrimination against disabled workers.

But there are loopholes in these laws that workers should understand.

"It can be a gray area about what laws protect you when," says Elizabeth Koumas, a labor attorney with the Barker Law Group in San Diego.

She says a lack of understanding about disability laws has caused an upswing in administrative complaints and civil suits over the past two years.

"People don't always know where they stand," Koumas says.

For instance, though Mitchell had not yet worked one day for new employer - which would gain her statutory protections - acceptance of her job offer could be interpreted as an employment agreement. After all, she quit her job and relocated with the expectation that she would have the job that had been offered her.

And Mitchell was taking a desk job. The fact she was on crutches would not stop her in any way from performing her job duties.

"Employers have the right to ask individuals during the interview process if they can perform the duties of the job without problems," Koumas says. "But you just can't ask that question of people who are obviously disabled. You have to ask it of all job seekers."

She says it probably would be difficult for any larger employer to present the case their business would be significantly affected by failing to make an accommodation of a new employee to delay the start date for a couple of weeks.

"Unless you can articulate just how your business would be affected, you probably don't have much of a case," she says. "But if you are hiring someone specifically to go to a national sales convention in two weeks and they won't be able to make that, that might be grounds for not hiring them."

Koumas counsels companies to tread carefully in this area because the law is a bit vague.

"I tell them they should err on the side of the employee," she says. "When the law is not black and white, you don't want to take chances."

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