

Happy Holidays FROM THE VRMCA STAFF

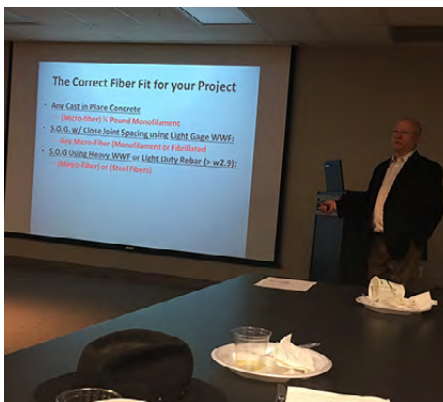
Southwest Council Wow's Engineers with Concrete Fibers Presentation

On December 6th, the Southwest Virginia Concrete Advisory Council hosted a catered breakfast aimed at engineers. The event was an amazing success with 8 people obtaining one professional development hour (PDH) each. Michael Carter, Concrete Fiber Specialist for Swope and Associates, gave a great presentation that was interesting and well received.

Boxley was kind enough to allow the council to use their room to host the seminar and Barnyard Catering brought out a breakfast spread that was second to none. Once every one had a heaping plate of food the presentation began. Michael's offering focused on fibers versus traditional wire reinforced concrete. It was exceptionally informative; discussing when to substitute fibers for welded wire fabric, which kind of fibers to use, and how they are a superior reinforcing system. The open forum atmosphere allowed the engineers to interject questions and have an on-going dialogue with the presenter. This in turn lead to everyone garnering a deeper understanding of the topic and provided some great case study type of information. Despite the seriousness of the material Michael kept the conversation light and humorous, including some slides of the "B Team" finishing concrete with the vapor barrier on top of the mesh and other similarly poor mistakes.

This event was enthusiastically received and everyone that attended truly enjoyed the presentation. If you missed the presentation and are interested in seeing it, Michael will be presenting to the Blue Ridge Council and engineers from that area in February and would love to see you!

Jason Connor, Director of Industry Services



in the mix ...

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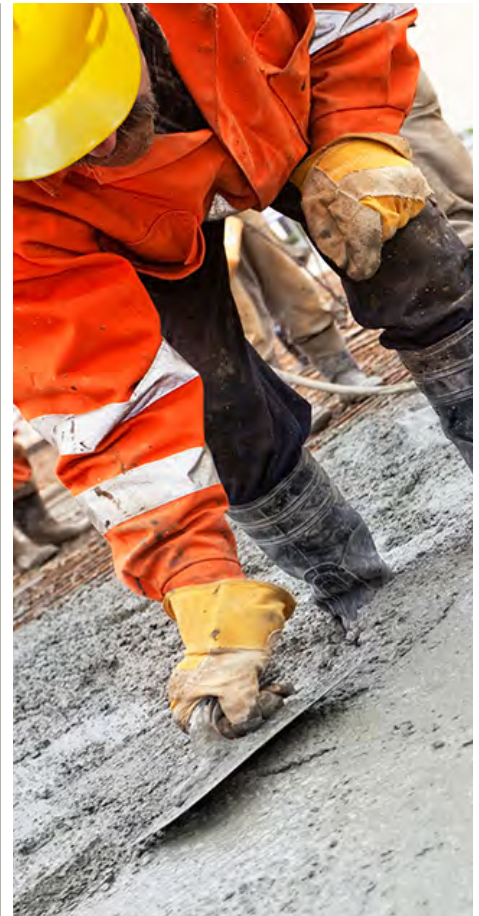
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Virginia Ready-Mixed Concrete Association

250 West Main Street, Suite 100 • Charlottesville, VA 22902

Phone: (434) 977-3716 • Fax: (434) 979-2439

easter@easterassociates.com • www.vrmca.com



2016 VRMCA Advisory Council Regions

Jay McNeely
VRMCA Advisory Council Chairman

Eagle Corporation
Charlottesville, VA
Phone: (434) 971-2686
pjm@eagle-corp.com

BLUE RIDGE

Rob Watkins
Chairman
Allied Concrete
P.O. Box 1647
Charlottesville, VA 22902
434-296-7181
rwatkins@allied-concrete.com

Scott Boshart

Secretary/Treasurer
Superior Concrete
Harrisonburg, VA
Phone: (540) 433-2482
sboshart@superiorconcreteinc.com

HAMPTON ROADS

Sarah Beasley
Chairman
Capital Concrete
400 Stapleton Street
Norfolk, VA 23504
757-627-0630 phone

757-627-3927 fax
sarah@capitalconcreteinc.com

Lee Flemming

Secretary/Treasurer
Essroc
Chesapeake, VA
Phone: (757) 647-9409
edward.flemming@essroc.com

NORTHERN VIRGINIA

Duane Laughlin
Chairman
Essroc Ready Mix
150 Lee Avenue
Winchester, VA 22604
540-323-3301 phone
540-723-4178 fax
duane.laughlin@essroc.com

Marc Granahan

Secretary/Treasurer
Lehigh Cement
Stone Ridge, VA
Phone: (703) 618-0735
mgranahan@lehighcement.com

RICHMOND/CENTRAL VA

Fred Lusby
Chairman
Powhatan Ready Mix
3501 Warbro Road
Midlothian, VA 23112
804-744-1472
flusby@powmix.com

John Lockett

Secretary/Treasurer
Roanoke Cement
Richmond, VA
(804) 432-4387
jlockett@roanoke-cement.com

SOUTHWEST

Bret Queen
Chairman
Chandler Concrete
Roanoke, VA
Phone: (540) 345-3846
bret.queen@chandlerconcrete.com

George Kuhn

Secretary/Treasurer
Chandler Concrete
Christiansburg, VA
Phone: (540) 382-1734
george.kuhn@chandlerconcrete.com

A Fun Wrap Up for the 2016 NVCAC Council



The 2016 NVCAC Holiday gathering was held on Thursday, December 8th at the Topgolf, in Ashburn. Topgolf is a premier golf entertainment complex where people can conduct a business meeting, play golf, make it a family day, dine or just hang out. Picture a 240-yard outfield with dartboard-like targets in the ground. The closer to the center or “bull’s-eye” you get and the farther out you hit your microchipped balls, the more points you receive. Every section of every target has a reader that detects the microchip in your clever golf ball. The reader computes your score based on the accuracy and distance of the shot and then sends the score to your bay screen.

The gathering started with a delicious breakfast buffet and offered a great opportunity for the members to celebrate the season, to network, to share ideas, to challenge their business partners on a competitive game of golf, and just have a good time. And having a good time, they did.

A collection of toys for the Toys for Tots program, food for the food bank, a great buffet and of course golf, made for a fun wrap-up for the 2016 NVCAC Council.

VRMCA is very grateful to all the member companies for their

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VRMCA is very grateful to all the member companies for their support of the NVCAC promotional council. The council relies heavily on its members' participation and greatly appreciates their efforts to support the council's promotional goals.

Hessam Nabavi, Director of Industry Services



LEGAL REVIEW

This legal review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

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*John G. Kruchko

Federal Court Says ADA Does Not Require Reassignment of Employee Without Competition

Executive Summary

If an employee can no longer perform the essential functions of his or her position due to a disability, one common

form of reasonable accommodation under the Americans with Disabilities Act (ADA) is reassignment to a vacant position. Last week, in *U.S. Equal Employment Opportunity Commission v. St. Joseph's Hospital*, 2016 WL 7131479 (11th Cir. 2016), the Eleventh Circuit (the federal appeals court over Florida, Georgia and Alabama) rejected a long-standing position of the U.S. Equal Employment Opportunity (EEOC) that as long as the disabled employee is qualified for the position the employer must place the employee in the vacant position and cannot require the employee to compete for it.

Background

A nurse at St. Joseph's Hospital suffered from spinal stenosis, which required her to use a cane for support. The nurse worked in the hospital's psychiatric ward, and the hospital became concerned about her placement in that department because of the possibility that patients could use the cane as a weapon. The hospital offered the nurse the opportunity to remain employed at the hospital and gave her 30 days to apply for other positions for which she was qualified. The hospital also waived its requirement that internal candidates be in their current position for more than six months before applying for a new position and have no final written warnings in their record. The nurse had recently been demoted for failing to follow hospital procedures and had a final written warning in her file, but in an effort to further accommodate her, the hospital waived these requirements. The nurse, however, was required to compete with other applicants for any position for which she applied. The nurse was qualified for three of seven positions for which she applied, but the hospital hired better-qualified applicants. Because the nurse was not able to secure employment within the 30-day period provided to her, she was terminated.

Court Decision

The ADA requires an employer to reasonably accommodate a disabled employee. 42 U.S.C. § 12112(a). Among the list of accommodations that may be reasonable is reassignment

to a vacant position. In this case, consistent with its long-standing guidelines, the EEOC argued that the hospital violated the ADA by requiring the nurse to compete for a vacant position she was qualified to perform. The Eleventh Circuit disagreed. Relying upon a Supreme Court decision that reassignment is not required when it would violate the rules of an employer's established seniority system, the Eleventh Circuit found that requiring reassignment in violation of an employer's best-qualified hiring or transfer policy is not reasonable. Notably, the court stated, "[p]assing over the best-qualified applicants in favor of less-qualified ones is not a reasonable way to promote efficient or good performance." The court further noted that "the ADA was never intended to turn nondiscrimination into discrimination against the non-disabled." According to the court, the ADA does not require an employer to turn away a superior applicant in favor of a disabled employee.

Bottom Line

When employers have hiring or transfer policies in place, such as a seniority system or a best-qualified applicant provision, the ADA does not require a reassignment that violates the company policies. This case may have turned out differently had St. Joseph's Hospital not had a best-qualified applicant policy in place. Because it did, the court found the ADA only requires that an employer allow the disabled employee to compete equally for a vacant position. Just as the hospital did here, employers can find other ways to accommodate the disabled employee when they require the employee to compete for positions. For example, here, the hospital waived the requirements that the employee have been in her current position for six months and that she have no final warnings on file. When it comes to reassignments and the ADA, employers should look at their policies to determine whether any requirements can be waived to accommodate the disabled employee or whether any other measures can be taken to further assist the employee in finding reassignment within the workforce. Note that the Eleventh Circuit's decision is a split from other circuits – including the Fourth Circuit, the relevant circuit court for Virginia. Thus, employers in Virginia should still be cautious when considering placing the disabled individual in the open position.

*By John G. Kruchko and B. Patrice Clair**

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John G. Kruchko is a partner with the Labor & Employment Law Firm of FordHarrison, LLP in Tysons Corner, Virginia; B. Patrice Clair is an attorney in the firm's Tysons Corner, Virginia office. Andy Hament, a partner in the firm's Melbourne office, and Ashley Ward-Singleton, an attorney in the firm's Tampa office, prepared an original version of this article. For more information, please contact Mr. Kruchko or Ms. Clair at (703) 734-0554 or by e-mail at jkruchko@fordharrison.com or pclair@fordharrison.com. This article is published for general information purposes, and does not constitute legal advice.

ON THE HORIZON *Calendar of Upcoming Events*

January 10, 2017

Hampton Roads Council Business Meeting
11:30 AM – 1 PM
Chesapeake, VA

January 12, 2017

VRMCA/Northern VA Council Selling Parking Lots Workshop
10:30 AM – 2 PM
Wyndham Garden Inn
Manassas, VA

January 18, 2017

VRMCA Technical Committee
10 AM – 2 PM
The Place at Innsbrook
Glen Allen, VA

January 24, 2017

Southwest Advisory Council Meeting
8 AM
Roanoker Restaurant
Roanoke, VA

February 15-16, 2017

VRMCA Winter Board Meeting & Legislative Visits
Omni Hotel
Richmond, VA

May 7-9, 2017

VRMCA Spring Convention
The Greenbrier
White Sulphur Springs, WVA

October 1-3, 2017

VRMCA Fall Convention
Hilton Oceanfront
Virginia Beach, VA

Thank You

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SAVE THE DATE February 16, 2017

We hope you will join us to visit with your State Legislators at the Capitol in Richmond. We will gather together on the morning of Thursday, February 16th at 8 a.m. at the Omni Richmond Hotel. A breakfast buffet and talking points will be provided. We will then proceed to Capitol Hill at 9 a.m. to visit with legislators.

If you should need a room at the Omni, please let me know. You will receive the \$179 group rate (all members are responsible for their own hotel charges).

Men should plan to dress in Coat/Tie and women in Business attire.

Please RSVP to christina.sandridge@easterassociates.com if you plan to attend or have any questions.



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