

## COMMON SCENTS IN THE WORKPLACE

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MARCH 19, 2010

In 2007, Susan McBride, a planning department employee in Detroit, filed a lawsuit in the United States District Court for the Eastern District of Michigan, claiming that a co-workers' strongly-scented perfume and plug-in room deodorizer impacted her ability to work. See, [McBride v. City of Detroit](#), Case No. 07-12794 (E.D.Mich., 2008). McBride brought her claim under the Americans with Disabilities Act ("ADA"), alleging that she suffered from a life-long sensitivity to perfumes, chemicals and other scented objects.

Specifically, McBride alleged that exposure to such scented objects (including her co-worker's perfume) caused her to experience migraine headaches, nausea, chest tightness, coughing, loss of voice, a scratchy throat, and rhinitis, and that it affected her breathing. As a result of her co-workers' perfume and use of other deodorizers, McBride claimed that she lost time at work, underwent medical treatments as a result of her alleged perfume-related illness, and had to stop fertility treatments as a result of medicine she was taking for the perfume related illness.

At issue in this lawsuit was whether McBride's sensitivities rose to the level of a disability within the meaning of the ADA and whether the employer had a duty to accommodate McBride's sensitivity after she reported her medical problems to her supervisor. Prior to filing her lawsuit, McBride had discussed with her employer the possibility of implementing a "scent" policy in the workplace, moving her office location (or that of the perfumed co-worker), and other ways in which she might be accommodated. While the employer did speak with the odorous co-worker, who stopped using room deodorizers, the co-worker refused to stop wearing perfume and other scented oils and the employer took no further action to put together any workplace scent policy. McBride's lawsuit asked that her employer pay for her resulting damages and that it accommodate her sensitivity.

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In November 2008, the Court denied the employer's motion for summary judgment, ruling that McBride could proceed with her claim of disability based on the major life activity of breathing. As a result, the Court left it up to a jury to decide McBride's claims, including whether or not she was "disabled" within the meaning of the ADA so as to be entitled to protections under the ADA and whether it would have been a reasonable accommodation for the employer to adopt a policy regarding scents, move either McBride's or her co-worker's assigned workspace, or reimburse McBride for used-sick time under the Family and Medical Leave Act.

Before this case reached the jury, McBride settled with her employer for \$100,000. As part of the settlement, the employer also agreed to encourage workers to minimize or eliminate perfume, aftershave, deodorant and other scented products in the workplace and to include scent sensitivity issues in the employer's handbooks and ADA training. Scented candles, lotions, and air fresheners will also be banned.

While most people can empathize with the frustration and unpleasantness an employee may feel if subjected to an egregious olfactory assault by an overly perfumed co-worker, often complaints like McBride's are not taken seriously by employers or co-workers.

Employers are reluctant to delve into issues relating to personal hygiene or an individual's right to wear and use the scents they like in the way of perfumes, shampoos and lotions. However, for employers, ignoring such complaints can be costly. McBride's lawsuit is just one of many disability-based lawsuits that have been filed by employees with chemical and odor sensitivities over the last ten years. While Court's have not uniformly ruled that such sensitivities qualify as a disability under the ADA, the analysis is very fact-specific and often turns on the individual employee's symptoms and reactions to the offending chemicals/scents.

However, given the potential exposure under ADA cases plus the cost of defending a lawsuit through trial, employers faced with complaints of chemical and/or odor sensitivity should consider taking them as seriously as any other request for an accommodation. Without admitting that the employer has a legal obligation to make an accommodation or that the employee is entitled to protections under the ADA, employers should use a common-sense approach to complaints or requests by employees regarding strong-scents in the workplace. This includes engaging in an interactive discussion with the employee about what is bothering him/her and what can be done about it.

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Employers who have made such “reasonable accommodations”, including training employees about scent-related issues, implementing policies discouraging the use of fragrances that may trigger allergies, minimizing the affected-employee’s contact with other employees, and moving the affected employee’s workspace, have successfully defended chemical/scent-related disability lawsuits. See, e.g., Heaser v. Allianceone Receivables Management, Inc., Case No. 07-CV-2924 (D. Minn. 2009).

The bottom line? Complaints about strong scents in the workplace are nothing to sneeze at.

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