

## HOUSEKEEPER AT HOSPITAL TAKES FORMER EMPLOYER TO COURT OVER ASTHMA



A former housekeeping assistant at Northwestern Hospital in Illinois brought action against her former employer for allegedly failing to accommodate her asthma. But her lawsuit was futile for one of the simplest reasons – she may have waited too long to file her claim. She was hired by the hospital in 1999 to clean patients' rooms and isolation rooms. She worked with various cleaning products and disinfectants, and the supplies and dust aggravated her asthma. In 2008, her physician submitted a written request that she work only "light duty," without specifying what that would entail. Northwestern complied – she dusted and cleaned but did no heavy lifting. Her restrictions were later altered by the doctor to include not lifting more than ten pounds and staying away from chemicals and dusty environments. During her light duty, she couldn't avoid chemicals and dust, but she was also lifting heavy trash and pushing a cart, the latter which her physician recommended she not do. She testified in court that she would be unable to do her job without the use of a cart. In June, her doctor okayed her for work but limited her to standard products such as Windex, while still avoiding excessive dust and "strong" chemicals. She worked successfully abiding by these conditions from mid-2008 to May 2009. The woman took medical leave in May 2009 following a severe asthma attack. Her doctor believed she could return to work in November, but her symptoms worsened. In May 2010, the physician determined that the woman's asthma was "triggered" by her work environment and that she could not return to her housekeeping position. In June, the hospital sent the woman a letter, informing her that she had exhausted her insurance benefits and that she would be fired if she didn't return to work. It also asked to let Northwestern know if she could not work due to a disability. The woman replied, but her letter was returned undelivered. The hospital terminated her employment in July. The lawsuit in September 2010 alleged a violation of the ADA (Americans with Disabilities Act) for not accommodating her. She asked for back pay, front pay and legal costs, as well as damages for her asthma and resultant permanent injury. Northwestern moved for summary judgment, arguing that she had been unable to work since her leave in May 2009 and wasn't qualified as per ADA guidelines. Likewise, her July 2010 EEOC (Equal Employment Opportunity Commission) charge only included the prior 300 days, which would have been no earlier than August 2, 2009 – excluding the time period of her allegations. The woman didn't dispute that she was unable to work since her medical leave but argued that she was qualified because, during her leave, her physician had not yet concluded that she couldn't return to work. The district court, however, agreed that the claim was time-barred and ruled in favor of the hospital. On appeal, the former employee stated that Northwestern was estopped – legally barred – from arguing on the untimely claim because she was led to believe that the hospital would accommodate her upon her return to work. But judges affirmed the district court's decision, further noting that the woman did not even suggest an alternate position that she could have handled at the hospital – a necessity for successfully arguing an ADA claim.