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NFL Player Sues the New York Jets for ADA Violation

The Jets' strong safety, Rontez Miles, filed a lawsuit in New Jersey state court against the NFL alleging that his rights under the New Jersey Law Against Discrimination (NJ LAD) and the Americans with Disabilities Act (ADA) were violated when he was forced to remove a tinted helmet visor.

By **Jeffrey Campolongo and Faith Beckworth** | October 24, 2019



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The New York Jets have their fair share of problems on the field this season, especially after they were shut out in this week's Monday Night Football prime time game by their division rival, the New England Patriots. Apparently, the field is not where the team's problems end. In addition to dealing with a quarterback who's "seeing ghosts," the Jets' counsel is now faced with something just as spooky —federal court.

The Jets' strong safety, Rontez Miles, filed a lawsuit in New Jersey state court against the NFL alleging that his rights under the New Jersey Law Against Discrimination (NJ LAD) and the Americans with Disabilities Act (ADA) were violated when he was forced to remove a tinted helmet visor. Tinted visors have been banned in the NFL since 1998, though they are permissible for players with

certain medical conditions. The case in state court was filed as *Miles v. National Football League*, Morris County, MRS-L-001770-19 (N.J. Super. Ct. filed Aug. 19, 2019).

In his suit, Miles alleged that he suffers from “alopecia areata,” which is an autoimmune skin disorder that causes photosensitivity and photophobia in the eyes. The tinted helmet visor that Miles has worn throughout his football career is said to reduce the effects of ocular photosensitivity.

The visor issue came to a head during a preseason game against the Detroit Lions on Aug. 19, 2017. While warming up with the helmet visor on, Miles was told by an NFL referee to either remove his helmet visor or be removed from the game. Miles told the referee that the visor was necessary to protect his eyes from sun glare. He had previously collided with another player and was injured when his helmet did not include the visor.

Because he was grappling for a starting position at the time, Miles complied with the referee’s directive and he removed the visor in order to play the game. As luck would have it, a Detroit Lions offensive lineman lunged at Miles during the game. Instead of simply blocking him, however, the lineman’s hand went through Miles’ face mask and struck him in the eye. According to reports, Miles felt a sharp pain and he could not see for a few minutes. His orbital bone in his right eye was fractured in two places, requiring surgery. Miles claims in his lawsuit that this collision occurred because, without his visor, he was unable to see the player and unable to defend himself.

Miles’ complaint raises claims under the NJ LAD and the ADA on the basis that he is an employee of the NFL, with a disability, who sought and was denied a reasonable accommodation. The third count of Miles’ lawsuit also raises claims under state law for the injuries sustained by Miles under a respondeat superior

theory of liability. Miles has alleged that the injuries are not subject to the New Jersey workers' compensation bar, without providing more detail as to why such claims would not be barred.

The NFL recently removed the case to federal court and filed a motion to dismiss, see *Miles v. National Football League*, No. 19-cv-18327 (E.D. Pa. filed Sept. 25, 2019). In its motion to dismiss, the NFL contends that Miles' claims are preempted by the NFL collective bargaining agreement and barred by workers' compensation exclusivity. In addition, the NFL argues that the complaint fails to state a discrimination claim under either state or federal law. Among the arguments advanced by the NFL, it cites the Official Playing Rules, Rule 5, Section 4, Article 3 which states: "Item 1. Helmet, Face Protectors. Helmet with all points of the chin strap (white only) fastened and face mask attached. Face masks must not be more than 5/8-inch in diameter and must be made of rounded material; transparent materials are prohibited. Clear (transparent) plastic eye shields are optional. Tinted eye shields may be worn only after the league office is supplied with appropriate medical documentation and approval is subsequently granted. The league office has final approval."

The NFL also argued that the disability claims are deficient as a matter of law: "other than the conclusory allegation that the NFL official at the game was 'advised' of the plaintiff's purported disability, the complaint contains no allegation that the plaintiff provided any medical information, let alone the documentation required by the NFL rules, showing either that he has a covered disability or that he needed an accommodation. The plaintiff accordingly cannot establish a failure to accommodate claim under the LAD or ADA as a matter of law."

Players challenging the NFL for purported disability violations is not new or novel. In fact, a former New York Jets linebacker, Erin Henderson, sued the Jets in New Jersey Superior Court for wrongful termination and disability discrimination,

stemming from his placement on the nonfootball injury list midway through the 2016 season. According to his suit, Henderson suffered from bipolar disorder and the Jets failed to accommodate his “disability and wrongfully terminated his employment,” and “failed to have effective policies and procedures to protect employees from discrimination” by placing him on the nonfootball injury list without merit.

In looking at the statute itself, Title I of the ADA applies to employers, employment agencies, labor organizations and joint labor-management committees, 42 U.S.C. Section 12111(2). An employer is “a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person.” Notably, the statute provides no explicit exception for professional sports. The NFL is an unincorporated association of 32-member clubs all required to comply with the collective bargaining agreement, making each player an employee of their respective clubs. Thus, it would seem that the ADA will apply in appropriate circumstances.

A recent study in the University of Pennsylvania Law Review on the employment relationship between NFL players, the clubs and the league, arrived at a conclusion that the ADA and the Genetic Information Nondiscrimination Act (GINA) contain provisions limiting a team’s access to and use of current or prospective employees’ health-related information, see “Evaluating NFL Player Health and Performance: Legal and Ethical Issues,” (165 U. Penn. L. Rev. 227, Jan. 2017). The study also discovered that some longstanding evaluations of players, both at the NFL Scouting Combine and once drafted and playing for a team, seem to violate the law.

Specifically, medical examinations conducted at the combine potentially violate the ADA's prohibitions on pre-employment medical exams; post-offer medical examinations that are made public potentially violate the ADA's confidentiality provisions; post-offer medical examinations that reveal a disability and result in discrimination—e.g., the rescission of a contract offer—potentially violate the ADA provided the player can still perform the essential job functions; combine medical examinations that include a request for a player's family medical history potentially violate GINA; and the preseason physical's requirement that a player disclose his family medical history potentially violates GINA.

While the case for Rontez Miles seems to face as much of an uphill battle as the rest of the Jets' season, there is a growing trend to view NFL players through the lens of disability discrimination laws. As the NFL continues to battle lawsuits relating to player concussions, safety and the use of certain helmets, it does beg the question of whether player protection will come in the form of a federal statute as opposed to shoulder pads.

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