

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 18 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Doctor SHINA R. ZEHNDER, M.D.,

Plaintiff - Appellant,

v.

MAYO CLINIC - ARIZONA, a domestic
non-profit corporation,

Defendant - Appellee,

and

MAYO CLINIC, a foreign nonprofit
corporation; Mayo Clinic School of
Graduate Medical Education,

Defendant.

No. 25-4633

D.C. No.

2:23-cv-00355-DJH

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona

Diane J. Humetewa, District Judge, Presiding

Argued and Submitted June 8, 2026
San Francisco, California

Before: GOULD, NGUYEN, and VANDYKE, Circuit Judges;
Dissent by Judge GOULD.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Plaintiff-Appellant Dr. Shina Zehnder appeals from the district court’s grant of summary judgment to Defendant-Appellee Mayo Clinic Arizona (“Mayo”) on Plaintiff’s claims of disparate impact under the Americans with Disabilities Act (“ADA”), failure to accommodate under the ADA, failure to accommodate under the Rehabilitation Act, and disability discrimination under the Arizona Civil Rights Act (“ACRA”). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

We review a district court’s grant of summary judgment de novo. *Barton v. Off. of Navajo*, 125 F.4th 978, 982 (9th Cir. 2025). “Summary judgment is appropriate when, viewing the evidence in the light most favorable to the nonmoving party, there is no genuine dispute as to any material fact.” *Zetwick v. Cnty. of Yolo*, 850 F.3d 436, 440 (9th Cir. 2017) (citation omitted).

1. For Dr. Zehnder’s failure-to-accommodate claims, she must show that she (1) “is disabled,” (2) is “a qualified individual able to perform the *essential functions* of the job with reasonable accommodation,” and (3) “suffered an adverse employment action because of [her] disability.”¹ *Allen v. Pac. Bell*, 348 F.3d 1113, 1114 (9th Cir. 2003) (emphasis added). The parties’ dispute turns on whether the

¹ Because failure-to-accommodate claims under the ADA, Rehabilitation Act, and ACRA all use the ADA standard, we do not conduct separate analyses for each of those claims. See *Coons v. Sec’y of U.S. Dep’t of Treasury*, 383 F.3d 879, 884 (9th Cir. 2004); *Ransom v. State of Ariz. Bd. of Regents*, 983 F. Supp. 895, 899 n.3 (D. Ariz. 1997).

residency program’s two types of night shifts—Interventional Radiology (“IR”) Night Call and Night Float—are “essential functions” of the residency program.

Essential functions are “fundamental job duties” as opposed to “marginal functions of the position.” 29 C.F.R. § 1630.2(n)(1). Job functions may be essential, for instance, “because the reason the position exists is to perform that function,” or “because of the limited number of employees available” to perform the function. *Id.* § 1630.2(n)(2). Per regulation, factors to consider in the essential-function analysis include the employer’s judgment, written job descriptions, the amount of time spent performing the function, the consequences of not performing the function, and the work experience of past employees. *Id.* § 1630.2(n)(3); *see also* 42 U.S.C. § 12111(8). The “essential function” inquiry is “highly fact specific”: different factors may carry different weight depending on the context. *See Cripe v. City of San Jose*, 261 F.3d 877, 888 n.12 (9th Cir. 2001). The employer bears the burden of showing that a job function is essential. *Samper v. Providence St. Vincent Med. Ctr.*, 675 F.3d 1233, 1237 (9th Cir. 2012).

Because the essential-function regulatory factors strongly support that IR Night Call and Night Float are essential functions, the district court properly granted summary judgment to Mayo. First, the employer’s judgment factor weighs heavily in favor of Mayo. Mayo’s witnesses gave numerous concrete reasons why IR Night Call and Night Float were essential parts of resident training. Dr. Fox, the director

of Mayo's diagnostic radiology residency program, testified that IR Night Call necessarily involves a greater density of patients with urgent, high-acuity symptoms. Common sense supports that conclusion: patients who come in at 3:00 a.m. are more likely to be suffering severe symptoms.

During Night Float shifts, the resident is the only radiologist physically present in the hospital, meaning that they are solely responsible for all in-person patient management and for all procedures performed during the shift. Dr. Fox and Dr. Hara, who chaired Mayo's department of radiology, both testified extensively about the educational value of Night Float compared to daytime or evening "short call" shifts: the added pressure of being the only radiologist physically present in the hospital, which requires handling work from all hospital departments, teaches residents how to function autonomously and is "the closest that [faculty] can get to evaluating [a resident] as an independent radiologist." In contrast, residents learn less when they constantly have faculty looking over their shoulders and are splitting responsibilities with other residents during daytime and evening shifts. Dr. Fox and Dr. Hara agreed that the additional responsibility and autonomy required by Night Float is the closest the residency program gets to real radiology practice.

Dr. Zehnder's evidence does not create a genuine dispute regarding the importance of IR Night Call and Night Float. She relies on the testimony of Dr. Sill,

a former Mayo resident; the hiring of “Nighthawks,”² emergency radiologists remotely covering all overnight shifts a year, including residents’ Night Float shifts and the Accreditation Council for Graduate Medical Education’s (“ACGME”) accreditation requirements.

Although Dr. Sill estimated that he was only called back to the hospital three times while on IR Night Call, his testimony was only about his experience. Dr. Sill’s testimony also does not meaningfully counter Dr. Fox’s testimony that IR Night Call involved a greater density of patients with urgent, high-acuity symptoms. As the program director, Dr. Fox observed a much broader number of residents and is in a much better position to weigh the educational importance of IR Night Call.

Dr. Zehnder asserts that the Nighthawks’ hiring reduced residents’ autonomy during Night Float to such a degree that Night Float is now “virtually indistinguishable” from other shifts. Dr. Zehnder relies on Dr. Sill’s testimony that he “would assume” the Nighthawks review and finalize residents’ preliminary reports within an hour. But Dr. Sill completed his residency before the Nighthawks were hired, so his testimony is purely speculative. Even if Dr. Sill’s testimony carried meaningful weight, it only relates to how quickly residents’ preliminary reports were reviewed and does not rebut the educational value of being the only

² “Nighthawk” is not the remote overnight radiologists’ official title, but we adopt it for ease of reference because both parties use the term.

radiologist physically present in the hospital over a ten-hour shift to manage patients and perform procedures. Because the Nighthawks work remotely from out-of-state, that key aspect of Night Float did not change.

Dr. Zehnder also relies on the ACGME accreditation requirements not explicitly requiring overnight work. But the regulation calls for consideration of the *employer's* judgment, not an accrediting agency's. *See* 29 C.F.R. § 1630.2(n)(3)(i). In addition, the accreditation requirements merely set a floor for residency programs; beyond that floor, the ACGME allows substantial discretion in designing programs. The ACGME requirements therefore do not create a genuine issue of material fact undermining Mayo's judgment that the night shifts are essential to resident training.

The first regulatory factor—the employer's judgment—therefore weighs in favor of Mayo. And in the context of medical education, the employer's judgment merits special weight in the “highly fact specific” essential-function inquiry, *see Cripe*, 261 F.3d at 888 n.12, because of the high stakes and unique structure of medical training. And, since the hybrid employee-student structure of medical education looks much different from what people in other fields are familiar with, medical educators like Dr. Fox and Dr. Hara are in the best position to assess the value of parts of a resident's training.

Most of the other regulatory factors weigh in favor of Mayo as well. The job description, which was in place before Dr. Zehnder interviewed with Mayo, notifies

future residents that they will have to work 24-hour on-call shifts and some nights. And Dr. Zehnder testified that she knew the Night Float and IR Night Call requirements going into the program. The consequences of not performing the function also weighs in favor of Mayo: as described above, the evidence suggests that, without night shifts, residents would be forgoing some of the program's most valuable experiences. Finally, the work experience of past employees supports that the night shifts were essential functions. Dr. Hara and Dr. Fox both testified that no resident has ever been excused from Night Float or IR Night Call rotations.

The time spent performing the function is a factor that may favor Dr. Zehnder, but it is not dispositive because infrequently performed duties may still be essential. *See* 29 C.F.R. § 1630 app. (“For example, although a firefighter may not regularly have to carry an unconscious adult out of a burning building, the consequence of failing to require the firefighter to be able to perform this function would be serious.”). Especially because the evidence indicates that night shifts are disproportionately important parts of resident training, this factor alone does not suffice to create a genuine issue of material fact.

Because the regulatory factors heavily favor the conclusion that IR Night Call and Night Float are essential functions of Mayo's residency program, we affirm the district court's grant of summary judgment to Mayo on the failure-to-accommodate claims under the ADA, Rehabilitation Act, and ACRA.

2. We also affirm the district court’s grant of summary judgment on Dr. Zehnder’s disparate-impact claim. Business necessity is an affirmative defense to a disparate impact claim. *See Freyd v. Univ. of Or.*, 990 F.3d 1211, 1224 (9th Cir. 2021). Here, the district court based its business-necessity determination on its conclusion that the overnight assignments were “essential functions” of the residency program. Dr. Zehnder contests that determination only by challenging the district court’s essential-function analysis. Because we conclude that there is no genuine issue of material fact as to whether the overnight assignments were “essential functions,” we also affirm the district court’s grant of summary judgment to Mayo on the disparate impact claim.

AFFIRMED.

SEP 18 2026

Zehnder v. Mayo Clinic – Arizona, et al., No. 25-4633MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**GOULD**, Circuit Judge, dissenting:

This appeal turns on whether Interventional Radiology (“IR”) Night Float and Night Call are *essential functions* of the Mayo Clinic’s radiology residency program. Because there are genuine disputes of material fact as to whether IR Night Float and Night Call are essential functions of radiology residents, I would have reversed the district court’s grant of summary judgment in favor of the Mayo Clinic and remanded with instructions to leave the essential functions question to the jury.

The Mayo Clinic’s concerns regarding patient care and resident training are significant in our essential functions analysis, but if the record permits competing inferences about whether Night Float and the overnight part of IR Night Call are operationally or educationally necessary, summary judgment was incorrect. *Easter v. Am. W. Fin.*, 381 F.3d 948, 957 (9th Cir. 2004). Evidence relevant to an essential functions inquiry includes the employer’s judgment, written job descriptions, time spent performing the function, consequences of nonperformance, collective-bargaining terms, and the work experience of past and current employees in similar positions. 29 C.F.R. § 1630.2(n)(3)(i)–(vii); 42 U.S.C. § 12111(8). The essential functions inquiry is “highly fact-specific.” *Cripe v. City of San Jose*, 261 F.3d 877, 888 n. 12 (9th Cir. 2001). Employer judgment is important, but not conclusive, because “an employer may not turn every condition of employment which it elects

to adopt into a job function, let alone an essential job function.” *Id.* at 887 (internal quotation marks and citation omitted). That framework prevents an employer from converting every preferred condition of employment into an essential function merely by labeling it as such. *See id.*

The Mayo Clinic’s judgment about the essential functions of its radiology residency is important, but not dispositive.¹ *See* 42 U.S.C. § 12111(8); 29 C.F.R. § 1630.2(n)(1)–(3); *Cripe*, 261 F.3d at 887–88. A reasonable factfinder could credit the Mayo Clinic’s evidence that the disputed assignments are essential because of their educational, patient care, staffing needs, or specialized nature. But a reasonable factfinder could also conclude that the essential functions are not the ability to staff particular timeslots, but rather the ability to gain and implement substantive skills that the Mayo Clinic identifies, including excellent and independent medical judgment, triage, consultation, preliminary interpretations, and IR patient care. Viewed in the light most favorable to Dr. Zehnder, the record would allow a reasonable factfinder to conclude that the essential functions here are residents taking on increasing responsibilities, gaining experience dictating preliminary

¹ The majority incorrectly weighs conflicting evidence with respect to a disputed material fact—namely, physicians’ differing testimony about the importance of Night Call. Here, the memorandum disposition states that the program director at Mayo Clinic was in a better position to weigh the importance of night call than a former radiology resident. Memorandum Disposition at 7; *see T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987).

reports on emergency department and inpatient imaging exams, providing consultations to other medical services, and authorizing or performing minor interventional procedures—not necessarily working the Night Float shift.

The district court erred by resolving that issue as a matter of law because it presented a genuine question of material fact that properly should have been decided by a jury. Rather than affirming, I would have held that it is for a factfinder, and not for the district court or for us at summary judgment to determine whether the Mayo Clinic met its burden to show that working the overnight shifts were essential functions of the Mayo Clinic diagnostic-radiology residency.

Because on this record the essential functions determinations should not have been resolved by summary judgment, I respectfully dissent.