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Employment Law Update: Employer Reasonableness Is Key To Defeat Employee Failure To Accommodate Claims

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According to the Americans with Disabilities Act (“ADA”), an employee who has a disability that makes it difficult to perform an essential function of the job may request an accommodation from an employer to enable the employee to do so. If there is no way to accommodate the employee’s disability or it is an “undue hardship” to the employer, the employer does not have to grant the accommodation request. Employers have a duty to engage in an “interactive process” to determine whether an accommodation can be made and the form of the accommodation. A recent Fourth Circuit Court of Appeals decision, Tartaro-McGowan v. Inova Home Health, illustrates that employers who are reasonable in negotiating with an employee over an accommodation request will be able to defeat “failure to accommodate” claims.

Tartaro-McGowan v. Inova Home Health

Laura Tartaro-McGowan was a registered nurse with Inova Home Health ("IHH”), an agency that provides healthcare services to patients in their homes. She had a bi-lateral knee replacement and developed chronic arthritis in her knees, making it difficult for her to squat, kneel, and bend. Because she could no longer safely perform some direct patient care, Tartaro-McGowan became a clinical manager and supervisor. She was assured by IHH’s management that, in her new role, she would not be required to perform direct patient care.

In 2020, when the Covid-19 pandemic struck, IHH required all nurses, including clinical managers, to perform direct patient field visits because the number of patients drastically increased and there was a nurse shortage. Ms. Tartaro-McGowan requested that IHH accommodate her by not requiring her to engage in direct patient care. IHH responded to the request by stating she could screen patients to determine which she wanted to visit and space the visits apart as much as possible to minimize potential stress on her knees. Ms. Tartaro-McGowan refused to accept the accommodation and insisted that she be exempted from direct patient care. She did not return to work after her request was rejected and sued IHH.

The Fourth Circuit Court of Appeals dismissed Ms. Tartaro-McGowan’s claims and ruled that no reasonable jury could conclude that IHH denied Ms. Tartaro-McGowan a reasonable accommodation. The Court explained that an employer’s chosen accommodation does not have to be perfect, only reasonable. It also noted Ms. Tartaro-McGowan’s failure to propose an alternative accommodation and insistence on her own solution without giving IHH’s proposed accommodation a chance.

Lessons For Employers

It is important for an employer to know that its proposed accommodation does not have to be perfect, it just needs to be reasonable. Employers should make sure they document the “interactive process” so they can provide proof of their actions, if necessary.

TAKEAWAY: Employers should document their reasonable, if not perfect, attempts to accommodate employees. If you have questions on the employer's duty to accommodate, or any federal or New Jersey employment law, contact Stephanie Gironda or any member of the Wilentz Employment Law Team.

Attorney

- Stephanie D. Gironda

Practice

- Employment Law