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Demand for "Straight Shift" Not Reasonable Accommodation under the ADA

On September 4, 2012, the 8th Circuit held in *Kallail v. Alliant Energy Corporate Services Inc,* that allowing an employee to move from rotating shifts to straight daytime work was not a reasonable accommodation required under the Americans with Disabilities Act (ADA). The employee was a Type I insulin dependent diabetic and her physician recommended she work straight day shifts only. The request was denied by the employer arguing that the position required rotating shifts to support operations 24 hours a day, seven days a week, to meet company safety requirements. The employer offered the employee 3 different straight day shift positions that met the employee's restrictions. However, all of the positions were rejected by the employee because of a decrease in pay or a longer commute.

The court determined that the rotating shift was an "essential function" in part because it was identified as essential in the written job description. The court observed that while job restructuring is a possible accommodation under the ADA, an employer does not have to reallocate or eliminate the essential functions of a job to accommodate a disabled employee. Therefore, the employer did not have to allow the employee to work the straight day shift that she requested. The court also said that reassignment to a vacant position can be a reasonable accommodation and because the employer offered a number of other positions to the employee, which she declined, there was no violation of the ADA.

This case emphasizes two important tips for employers. First, as discussed in our seminar last week, a well-crafted job description that identifies the "essential fuctions" of a position is very important. Second, always be sure to engage in the interactive process with the employee. Here, the court focused on the fact that the employer provided a number of opportunities to allow the employee to return to work under circumstances that accommodated her impairment and the employee's unwillingness to accept those positions relieved the employer of any liability.

Ohio Supreme Court Excuses "Late" Filing of Workers' Compensation Retaliation Claim

In a 6-1 decision announced on September 20, 2012, the Supreme Court of Ohio in Lawrence v. City of Youngstown recognized a limited exception to the general rule that a terminated employee must notify his or her employer of their intent to file suit alleging retaliatory discharge under R.C. 4123.90 within 90 days after the date of the employee's termination. The Supreme Court found that the statute's 90-day notification period can be extended if a discharged employee did not become aware that he or she had been fired "within a reasonable time" after the discharge.

The Court's opinion involved an employee who alleged he did not know he was fired until 6 weeks after his termination, thereby explaining why he sent his 90 day notice to the employer about a week late. The trial court granted the company summary judgment, finding the 90 day period begins to run on the date the employee was terminated, regardless of when he became aware of the termination and the appellate court upheld that decision. On appeal, the Supreme Court said that "discharged" under R.C. 4123.90 usually means the date the employer issued notice of the discharge, not the date the employee learns of the discharge. In such cases, the employer should provide reasonably prompt notice of discharge, and a delay of several days will not stop the time from running. However, the Court also ruled that if the employee does not become aware of the discharge within a "reasonable time," the 90 day period begins to run at the earlier of the date the employee became aware of the discharge or the date the employee should have been aware.

This decision places the additional burden on an employer to be proactive when notifying an employee of his or her termination in order to ensure that the 90-day notification period begins on the actual date of termination. The court also discussed at length the fact that the employer only sent the employee notice of his termination via regular mail. As part of an employer's "best practices," we have regularly advised employers to send all termination letters via both certified and regular mail, and this case shows how important that can be.

If you have any questions concerning how the ADA or retaliation cases affect your company, please contact a member of our Labor and Employment Law practice group at (419) 244-6788.

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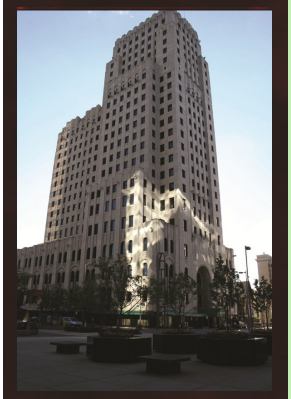

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