

COOKING AND CLEANING MAY BE “ESSENTIAL JOB FUNCTIONS” EVEN FOR MANAGERS

Publication
Jun 1, 2010

(Hospitality Update, No. 2, June 2010)

A federal appeals court decision provides some significant insight into what courts may consider to be “essential functions” of restaurant managers, in a case that arose under the Americans with Disabilities Act (ADA). *Richardson v. Friendly Ice Cream Corporation*.

JOB DESCRIPTIONS COUNT

Katharine Richardson was an assistant manager at a Friendly’s restaurant who, according to her six-page job description, was primarily responsible for 1) assisting the General Manager with administrative and operational shift duties; 2) providing guidance and direction to restaurant personnel; 3) overseeing, directing and assisting in the kitchen, dining and take-out operations; 4) facilitating production and customer service; and 5) ensuring that safety regulations and quality standards were maintained and that customer satisfaction was achieved.

When she injured herself grilling in the kitchen and scooping ice cream, she took time off to have shoulder surgery, and was granted leave under the Family and Medical Leave Act. When her leave expired, she was incapable of returning to work and was terminated.

Following her termination, Richardson filed suit in federal court alleging Friendly’s had failed to accommodate her disability in violation of the ADA. The district court tossed the case out, ruling in favor of the restaurant, because Richardson was not a

“qualified disabled individual” since she was unable to perform the essential functions of the job.

AND SIZE CAN MATTER

On appeal, the U.S. Court of Appeals for the 1st Circuit agreed and affirmed the district court’s award of summary judgment in favor of Friendly’s on the basis that Richardson was not qualified for her position, with or without an accommodation, because “an assistant manager had to be capable of performing a broad range of manual tasks.”

The court reasoned that, “[f]unctions that might not be considered essential if there were a larger staff may become essential because the staff size is small compared to the volume of work that has to be done.” The 1st Circuit explained that, “[i]f an employer has a relatively small number of available employees for the volume of work to be performed, it may be necessary that each employee perform a multitude of different functions. Therefore, the performance of those functions by each employee becomes more critical and the options for organizing the work become more limited.”

TEMPORARY ACCOMMODATION

Richardson admitted that it was often necessary for her to assist with the cooking, cleaning, food service, and unloading of delivery trucks in order to ensure that the restaurant ran smoothly. But she argued that the fact that her duties were temporarily reduced or removed when she first injured her shoulder and delegated to other employees proved that the tasks were non-essential.

The court rejected this argument, stating that an employer does not concede that a job duty is “non-essential” merely by temporarily accommodating a limitation. The court also found that the law “does not require an employer to accommodate a disability by foregoing an essential function of the position or by reallocating essential functions to make other workers’ jobs more onerous.” Consequently, it would be unreasonable for an assistant manager to delegate so many tasks that she no longer performed the essential function of physically assisting with the restaurant’s operations.

LESSONS LEARNED

The court held that the assistant manager’s job description, her admitted daily performance of manual tasks, and the fact that she sustained her injury performing these manual tasks supported the court’s determination that she spent a “substantial

amount of time on the job performing manual tasks around the restaurant” and those manual tasks, therefore, were essential functions of her job.

It's always a good idea to review your job descriptions periodically. Make sure that you're including *all* the important tasks for every position. If managers are expected to perform manual work on occasion, make sure that it's spelled out that way in the job description. And temporarily reassigning that work to others won't change the fact that they are essential.