Making "Scents" Of The ADA: Accommodating Employees' Sensitivity To Odors In The Workplace

Insights
10.01.10

(Labor Letter, October 2010)

Employers have a duty to reasonably accommodate requests by disabled employees for a modification of their job duties or the workplace environment in order for them to perform the essential functions of their position. Failure to engage in such a process can be an expensive proposition for an employer – as the City of Detroit found out in *McBride v. The City of Detroit.*

The Sweet Smell Of Excess

The City of Detroit recently settled a lawsuit brought by Susan McBride, a city planner who had claimed that due to lifelong chemical sensitivities she was allergic to her co-worker's perfume, making it difficult for her to breathe. The settlement of her claim under the Americans with Disabilities Act (ADA) included a substantial monetary payment to the employee, as well as the adoption of a "no-scent" policy asking employees to refrain from wearing scented products, including perfumes, colognes, after-shave, hair sprays, and similar items.

The court had previously rejected the City's motion to dismiss, finding that McBride had sufficiently pled that her chemical sensitivities substantially impaired the major life activity of breathing. In a later ruling on the City's motion for summary judgment, the court found that there were at least conflicting factual issues as to whether McBride was disabled, based upon substantial impairment to the major life activity of breathing.

With respect to the issue of a reasonable accommodation, the court further found the existence of factual disputes concerning why the City could not have 1) promulgated a policy imposing reasonable restrictions on the use of certain perfumes and other similar items, 2) simply ordered the co-worker in question to cease wearing the offensive perfume, or 3) considered some form of relocation of the co-worker.

You Take My Breath Away

The lesson from the above case is obvious: it is in your best interests to explore reasonable accommodations to employees' allergies or other sensitivities at the very outset as part of the interactive process, rather than reject such requests out of hand. The alternative can often involve expensive and unnecessary litigation. Today it is even more imperative for employers to explore reasonable accommodations in light of the recent amendments to the ADA which have broadened

the scope of what is considered a "disability," likely covering even more persons claiming chemical sensitivities to odors in the workplace.

Examples of potentially effective accommodations could include, among other things: 1) separating the complaining employee from the co-worker with the offending perfume or other scent (provided that this is practical and does not amount to a *de facto* punishment of the allegedly disabled employee); 2) adopting a company policy prohibiting employees from wearing excessive amounts of perfume, cologne, or other scents that could trigger allergic reactions; or 3) installing an air filter in the complaining employee's work area. The nature of the accommodation will, of course, depend upon the individual circumstances, and what is reasonable and practical in the particular situation.

Of course, no work environment can ever be made odor-free, and the courts do not require employers to adopt a "no-scents" policy requiring the elimination of any and all odors in the workplace. After all, by definition an accommodation is not "reasonable" if it imposes an undue burden on the employer. Furthermore, as part of the interactive process, you can request verification from the complaining employee's physician concerning the nature of the chemical sensitivity, and what type of accommodation is required. Nevertheless, be prepared to explore reasonable steps to address complaints by employees about odors in the workplace. Early proactive efforts to work with the employee should go a long way toward reducing the likelihood that your company will smell a lawsuit coming down the road.

Related People

Joel W. Rice
Partner
312.580.7810
Email