

WORK A FULL EIGHT HOURS? THAT'S NOT IN MY JOB DESCRIPTION!

Publication
Aug 1, 2014

According to the EEOC, healthcare employers are disproportionately represented in the ranks of those sued for violations of the Americans with Disabilities Act (ADA). Baptist Health South Florida, Inc. recently became one of those unlucky healthcare providers when the EEOC sued it for failure to accommodate a physician.

JUST WHAT WAS REQUESTED? OR PROMISED?

Baptist Health manages Doctors Hospital, which has an outpatient program that treats brain tumors and other neurological conditions with gamma rays. Dr. Linette Campos-Sackley, who has epilepsy, applied for a position as a General Medicine Practitioner. The EEOC alleged that Dr. Sackley disclosed her epilepsy and need to work only eight hours a day during her initial interview with Dr. Wolf, the outpatient clinic Director. Dr. Wolf allegedly said he understood her limitations and recommended that the hospital hire her, which the hospital did. Dr. Wolf was her direct supervisor.

But after Dr. Sackley started, Dr. Wolf frequently required her to work longer than eight hours a day despite his alleged understanding of her work restrictions. As a result of

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working long days, Dr. Sackley began having seizures again. Adjustments to her medication did not stop the seizure activity. Eventually, upon her physician's advice, Sackley told Wolf she had to work the eight-hour a day schedule agreed upon at her initial interview.

But the hospital said that an eight-hour a day work schedule was impossible and referred her to its Disability Management Manager to help her find another position. When the Manager met with Sackley and reviewed the essential functions of the job, they both concluded that Dr. Sackley was able to perform all of them. Further, Sackley's personal physician confirmed that she could perform the job's essential functions, but was limited to an eight-hour work day. The hospital thereafter terminated Dr. Sackley's employment.

The EEOC filed a lawsuit against Baptist Health in February 2014. Without admitting liability, Baptist Health agreed to pay Dr. Sackley \$215,000 to settle the lawsuit.

LESSONS LEARNED

The lawsuit illustrates the importance of accurate job descriptions that list *all* the essential functions of a job. The complaint suggested that even if there was a written job description, it did not say anything about how many hours a week a general medicine practitioner was required to work. Of course, to the extent it had, there still would have been the problem of Dr. Wolf's alleged comment that he understood the eight-hour limitation yet recommended Dr. Sackley for the position anyway.

If Wolf denied telling Sackley that he understood her limitation (thereby implying she could be accommodated), a job description or an offer letter that stated the daily hours-worked expectation would have supported his denial. In the absence of a job description or an offer letter with the hours required stated, the case would come down to who a jury believed – Dr. Sackley or Dr. Wolf – and it would be difficult

to establish that Dr. Sackley could not be accommodated. The absence of any hours expected in a job description or offer letter left the door open for miscommunication and misunderstanding.

Listing essential functions in job descriptions is fundamental. The ADA does *not* require employers to eliminate an essential job function to accommodate an employee. Thus, while an employer may be required to provide a reduced schedule for a finite time if doing so is not an undue hardship, it is not required to turn a 50- or 60-hour week into a 40-hour week to accommodate a disabled employee.

Healthcare providers should carefully review their job descriptions to confirm that they are accurate as to mental and physical essential functions and the number of hours the employee will be required to work or will average during a workweek. A good job description is a good defense to an ADA accommodation claim.

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