Litigation Trend in the Healthcare Industry Reveals Claims of Failure-to-Accommodate Disabled Employees During Pandemic's Height

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With the ongoing and largely successful national vaccine rollout, the path to some semblance of normalcy seems within Summer's grasp. However, many employers across the country find themselves swimming in costly and prolonged litigation fallout arising from legal claims alleging they failed to accommodate workers impacted by the virus. The healthcare industry is distinctive target for such claims given the unique danger the work environment presents to employees; e.g., the heightened likelihood of even minimal exposure to infected patients and/or contaminated areas. As the numbers of infected patients decrease, we are seeing an increase in lawsuits alleging that healthcare employers failed to accommodate disabled employees more susceptible to fatal COVID-19 transmission. This trend presents a somber reminder for healthcare employers: even when inundated in a global state of emergency, there remains the duty to dedicate time and prudent consideration to the interactive process when initiated by an employee with a medical disability.

Litigation Across the Nation and the Cautionary Tales Told

The following examples are illustrative of the ever-present duty to engage in an interactive process to provide reasonable accommodation(s) absent business hardship when confronted with a disabled employee.

From the Golden State to the coastal city of New Haven, Connecticut, healthcare facilities are fighting disability discrimination claims for the alleged failure to accommodate employees with respiratory conditions, including asthma and cancer, which increase susceptibility to calamitous complications from COVID-19 transmission. For example, at Yale New Haven Hospital, an "administrative associate" at the Hospital's blood bank was allegedly denied continued work-from-home (WFH) status despite having successfully worked remotely during the national shutdown. When the Hospital required all employees to return to work sites in May 2020, it allegedly denied a reasonable accommodation request by an associate who has cancer (making virus infection much more dangerous). In a very similar fact pattern on the other side of the country in California's capitol, Western Health Advantage allegedly denied WFH status to a data analyst stricken with asthma, despite the claim that it allowed similarly situated employees (e.g. other data analysts) without disabilities to work remotely. And back on the east coast in New Jersey, a home healthcare company allegedly denied an occupational therapist also suffering from asthma an exemption from treating COVID-19 infected patients.

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COVID-19 infected patients.

Although the facts of these examples – all involving active litigation – are derived from the civil complaints filed by the plaintiff disabled employees and therefore only tell one side of the story, they tell cautionary tales of the required interactive process. For example, in the lawsuit against Yale New Haven Hospital, the plaintiff, holding an administrative versus patient care position, alleges stellar performance and no disruption to her work while WFH during the shutdown. Similarly, the data analysist in Sacramento alleges facts in his complaint potentially eviscerating a colorable argument for business hardship – other similarly situated employees were permitted to WFH.

If these facts are proven through the course of costly discovery, possible liability exists for the employers as these employees would have been able to continue performing the essential functions of their jobs with the WFH reasonable accommodation. However, perhaps the facts are not as cut and dry when the employee is in a patient-care position like the occupational therapist in New Jersey. Although her civil complaint alleges concerning ancillary facts like the failure to provide proper PPE – thereby implicating other theories of liability – if the company proffers evidence that there were no non-infected COVID-19 patients (likely unlikely) to assign the therapist, arguably the affirmative defense of business hardship is stronger.

So What Can You Do?

Unfortunately, in practice the analysis is seldom clear cut. When evaluating accommodation feasibility and impact on business, you should take heed of the totality of circumstances, including factors like job type and nature of duties (admin versus patient care), acuity of the facility, whether the same accommodation has been afforded to others, ability to maintain data security while WFH, ability to comply with HIPAA remotely, ability to deliver similar quality of patient care – and the list goes on.

In short, the big takeaway is that no matter how busy you are, it is imperative to dedicate time and shrewd forethought to the interactive process. This obligation is present even in the of middle of medical emergency like a global pandemic where overwhelming sick patients require critical care. In the medical field, we know there will always be an emergency, but committing to the interactive process through careful evaluation of potential accommodations in prompt response to a disabled employee's request will insulate your company from expensive litigation and even pricier liability.

Conclusion

For further information about COVID-19-related litigation being filed across the country, you can visit our COVID-19 Employment Litigation Tracker. Our COVID-19 Employment Litigation and Class & Collective Actions section also has a listing of our litigation-related alerts and team members handling these types of cases.

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Insight System to get the

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