Barking Up the Wrong Tree? The Legal Risks of Delaying ADA Accommodations and Best Practices to Avoid Liability

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In a decision that may rattle employers nationwide, a federal appeals court recently revived an Army veteran's ADA suit against her employer for delaying her request to bring a service dog to work, despite eventually granting the accommodation. The May 16 ruling from the 5th Circuit Court of Appeals underscores that delay alone – even without a workplace injury or accommodation denial – may still violate federal disability discrimination law. This decision aligns with the EEOC's stance and highlights a widening circuit split that could soon draw Supreme Court scrutiny. What are some best practices you can take to minimize the chances of facing liability at your workplace?

The ADA Framework: Reasonable Accommodations and the Interactive Process

The Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodations to qualified individuals with disabilities unless doing so would impose an undue hardship.

- Once an employee requests an accommodation, the employer and employee should engage in a timely and good faith interactive process.
- An employer's unreasonable delay in responding to an employee's request for an accommodation may amount to a failure to provide reasonable accommodation.
- In this most recent case, an employer's demand for additional medical review despite sufficient documentation was viewed as an unnecessary obstacle – one that could support liability under the ADA.

The 5th Circuit's Message: Delay Can Be Discrimination

The *Strife v. Aldine Independent School District* case arose after Army veteran Alisha Strife requested to bring her service dog, Independence, to her job with a Texas school district to manage symptoms of PTSD and a traumatic brain injury, which caused limitations in her balance, standing, and gait. Despite supporting documentation from her treating physicians confirming the existence of her impairments and need for accommodation, the district delayed acting on her request for six months, insisting on an independent medical examination.

Only after Strife filed suit did the district approve the accommodation. The trial court dismissed all her claims, reasoning that she suffered no concrete harm since she continued working without interruption. But the 5th Circuit disagreed and reversed the dismissal of her failure to accommodate claim, finding that the delay itself could reflect a lack of good faith in the ADA's required interactive process and thus a failure to reasonably accommodate. The court emphasized that employees should not be forced to "work under suboptimal conditions" while employers unnecessarily stall.

A Circuit Split That Could Invite Supreme Court Review

The 5th Circuit's decision highlights a longstanding disagreement among federal appellate courts over what an ADA plaintiff must plead and prevail on a claim for failure to accommodate.

- Some courts – including the 4th, 5th, 6th, 7th, and 10th Circuits – hold that a failure to accommodate is actionable on its own, even if the employee does not suffer job loss, reduced pay, or other adverse action.
- In contrast, circuits like the 1st, 2nd 8th, 9th, 11th, and D.C. require that the failure cause some tangible harm to the employee's terms and conditions of employment.

For example, the 11th Circuit has stated that a failure to reasonably accommodate is only actionable if that failure "negatively impacts the employee's hiring, advancement, discharge, compensation, training, and other terms, conditions, and privileges of employment." While the Supreme Court declined to resolve the issue in a 2021 case, growing inconsistencies may eventually force the Court's hand. This is particularly true in light of SCOTUS's decision in *Muldrow v. City of St. Louis*, which held that Title VII discrimination plaintiffs need only show "some harm" that does not have to be "significant."

The EEOC's Position: Delay Alone Can Be a Violation

The EEOC weighed in on *Strife* with an amicus brief arguing that an unexplained delay – especially one that involves additional barriers like unnecessary medical exams – can be a violation of the ADA, even without an adverse employment action.

- The EEOC emphasized that Strife's request was straightforward and did not require any further actions such as facility modification or procurement of a service animal.
- The court found that she pled sufficient facts that, if proven, could allow a factfinder to conclude that the employer unjustifiably delayed responding to her request and failed to explore interim solutions – factors that could support a finding of failure to accommodate.
- This position is consistent with the EEOC's guidance and recent enforcement actions, including a recent lawsuit against a car dealership that outright denied a veteran's service dog accommodation without exploring alternatives.

Don't Deny and Disengage: Employers Must Do More Than Say "No"

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There are significant reasons to engage in an interactive process even if you believe one does not exist.

- First, an employer's good faith effort to reasonably accommodate an employee is a defense to a plaintiff's ability to recover compensatory and punitive damages for failure to accommodate.
- Second, the failure to engage in the interactive process could serve as evidence of bad faith that supports the recovery of punitive damages for failure to reasonably accommodate.
- Third, the EEOC and plaintiffs' attorneys are far more likely to pursue a case when an employer outright denies the request for a reasonable accommodation without engaging in the interactive process. For example, in *EEOC v. Criswell Chevrolet*, the EEOC sued a car dealership for denying a veteran the ability to bring a service dog to work to manage PTSD symptoms. The dealership's human resources department rejected the request within 24 hours and failed to propose any alternative accommodation or engage in further discussion. Thus, both outright denials and prolonged silence can expose employers to risk.

What Can You Do in The Interim?

With federal courts still divided on whether an ADA failure-to-accommodate claim must involve an additional job-related harm, the legal landscape remains unsettled. Until the Supreme Court steps in to resolve the split, you should adopt a cautious and consistent approach to avoid liability under either interpretation.

To help ensure compliance and limit legal risk, consider the following best practices when responding to accommodation requests:

- **Respond Promptly:** Acknowledge the request right away and initiate the interactive process without delay. Timing alone can make or break a claim.
- **Limit Medical Barriers:** If the employee has provided documentation that supports that they have a disability and require a reasonable accommodation, avoid demands for independent medical exams or excessive paperwork. If you genuinely need more information, give the employee a written request for the information or seek written clarification of the treatment provider's documentation through the employee – and consider offering interim accommodations.
- **Act in Good Faith:** Maintain open communication, approach the discussion collaboratively, and avoid putting up procedural roadblocks, such as:
  - Requiring the employee to route requests through unnecessary layers of internal approval;
  - Delaying meetings without explanation;
  - Imposing arbitrary deadlines or forms not required by law; or
  - Requesting re-submission of previously provided documentation.

- **Provide Alternatives When Denying:** If the requested accommodation isn't feasible, communicate why and work with the employee to explore other reasonable solutions.
- **Document the Process:** Maintain thorough records of all steps, communications, and decisions throughout the accommodation process. These details can be critical in defending your actions.

Conclusion

We will continue to monitor these developments and provide the most up-to-date information directly to your inbox, so make sure you are subscribed to Fisher Phillips' Insight System. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our Employee Leaves and Accommodations Practice Group.

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