When Is More Leave Not a Reasonable Accommodation?

Insights
11.26.13

Cases under the ADA are fact specific. Often it is difficult to find clear cut standards for determining if an employee is qualified to perform the essential functions and if an accommodation is reasonable. In Attiogbe-Tay v. Southeast Rolling Hills LLC, a court concluded that a nurse who returned to work at a senior living facility was no longer qualified because of restrictions on squatting, kneeling and lifting. The Court also held that six additional weeks of leave was not a reasonable accommodation. The problem arose when the employee returned from 12 weeks of FMLA Leave for knee-replacement surgery. The nurse provided a note from her physician indicating that she could not kneel, squat or lift more than 50 lbs., and asked for more leave or other accommodations. The employer replied that it could not accommodate her by providing an additional six weeks of leave or by allowing her to seek assistance from coworkers when she had to lift or move a patient.

This response may seem a little bit surprising to you. Employers often provide additional leave after the expiration of FMLA's 12 weeks. Also, there might be jobs where obtaining help from a coworker might be a reasonable accommodation. However, in this case, the employee's request did indeed present an undue hardship for the employer. The employer showed that lifting more than 50 lbs. was an essential job function. The court also concluded that the consequence to patients of the LPN being unable to perform the duty were "potentially dire." Common sense suggests that a nurse would have trouble working with patients in the rigorous atmosphere of a senior living facility with such limitations.

The employer successfully argued that the two accommodation options would present an "undue hardship." She was the only nurse working on her night shift and allowing her a six week additional leave of absence until the restrictions expired presented an undue hardship. The employer had already spent $8,000 in additional staffing cost to utilize a temporary overnight nurse while she was on FMLA leave. In addition to the additional cost, the employer convincingly explained that modifications and inconsistency in care could create an unacceptable level of care, as well as fatigue to other LPN's. Courts tend to respect compelling arguments that an accommodation will create hardship on coworkers, such as requiring them to take on arduous additional duties or to work more hours.

The court also concluded that the employer had not "interfered" with the employee's FMLA right's because it allowed her to take her mandated 12 weeks with leave. The court cited an Eight Circuit case and noted that an employer is not under an obligation to reinstate an employee after FMLA leave if she remained unable to perform the essential function of her position upon return from the

leave if she remained unable to perform the essential function of her position upon return from the leave. Sounds as if the court made the correct call. However, your facts may be different. The takeaway is that this employer carefully went through the interactive process and made defensible decisions about reasonable accommodation and "undue hardship." What expression do I repeatedly make? Avoid knee-jerk decisions … and decisions that make one look like a jerk. But that's a topic for another post.

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