



Recent Court Decision Highlights Common Pitfalls for Employers Dealing with Employee Disability Issues.

Client Advisories

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A recent case decided by the federal District Court of New Jersey, *Brown v. Dunbar*, starkly demonstrates the danger of rigid employer policies or a one-size-fits-all approach to employee disability issues. The Court made absolutely clear that under the New Jersey Law against Discrimination (“NJLAD”), employers have an affirmative duty to engage in what is called the “interactive process” with employees who have disabilities to determine if a reasonable accommodation is possible. While the Court’s holding did not make new law, the decision illustrates several common misconceptions which can lead to employer liability and highlights the importance of training supervisors and managers on the basics of handling disability issues.

In *Brown*, the employee was a crew chief for Dunbar Armored Inc. (“Dunbar”), which was a strenuous job, requiring heavy lifting throughout the day. After undergoing coronary bypass surgery, the employee was placed on leave pursuant to the Family and Medical Leave Act (“FMLA”). While on leave, the employee submitted short-term disability leave paperwork indicating an expected return to work date two weeks before the expiration of his FMLA leave. Prior to the expiration of his FMLA leave, the employee spoke with his supervisor. Although the supervisor denies it, the employee alleged that he requested light duty work. At the conclusion of FMLA leave, the employee was not medically cleared to return to work and, one week later, the company terminated his employment and encouraged him to apply for future openings with the company when he was cleared to work.

The same day of his termination, the employee was cleared for light duty work by his cardiologist, who estimated that the employee would be released for full duty work within six weeks. The employee sought to be reinstated to his position, but his supervisor determined that the replacement employee was doing a superior job, so the supervisor decided not to rehire the employee.

The NJLAD not only forbids discrimination on the basis of an employee’s disability but also requires that employers “reasonably accommodate” employees with disabilities. In order to determine whether a disabled employee can be reasonably accommodated, employers are obligated to engage in what is called the “interactive

process.” In *Brown*, the employee filed suit alleging that the employer violated the NJ LAD by failing to engage in this interactive process.

The *Brown* Court outlined the test followed by New Jersey courts for determining whether an employer has violated its obligation to uphold its end of the interactive process. The claim has four elements: (1) the employer knew about the employee’s disability; (2) the employee requested accommodations or assistance for his disability; (3) the employer did not make a good faith effort to assist the employee in seeking accommodations; and (4) the employee could have been reasonably accommodated but for the employer’s lack of good faith. Here, Dunbar was aware of the employee’s disability and had approved the initial leave under the FMLA. However, Dunbar argued that because no one in Dunbar’s human resources department was made aware of the employee’s request to return to light duty, prong 2 was not met and the company was not required to initiate the interactive process.

The Court made clear that even if a fact-finder determined that the employee actually made a request only to his supervisor, without telling Human Resources, and even if the accommodation requested by the employee was not reasonable, this was sufficient to put the company itself on notice and to require it to engage in the interactive process. So, even though the employee did not request a temporary leave in addition to his FMLA leave (the employee requested light duty), the Court found that this triggered Dunbar’s obligation to consider extending the employee’s temporary leave as a reasonable accommodation.

Dunbar also argued since the employee’s doctor did not give a date certain when the employee would be released to return, temporary leave could not have been a reasonable accommodation. The Court rejected this argument, stating that it was sufficient that the doctor had identified an anticipated date or a general period of likely recovery.

The Court also rejected the employer’s efforts to read into the NJLAD procedural hoops the employee must jump through before accommodations must be considered, such as a written request for accommodation, or a written request with documentation that specifically identifies temporary leave as an accommodation and a date certain for return.

As demonstrated in *Brown*, when faced with employee disability issues, employers should not rush to a decision based on a narrow analysis, but should carefully consider their broad duties to accommodate employees. *Brown* illustrates common mistakes employers must avoid. First the expiration of FMLA leave does not mean that an employee may be terminated without consideration of his or her rights to reasonable accommodation under the NJLAD. Second, continued job-protected leave beyond the FMLA may be a reasonable accommodation under the NLLAD. Third, the interactive process is just that - both interactive and a process. Employers risk liability when they make assumptions and jump to refusals without engaging the employee in a good faith discussion. Employers cannot refuse to engage in the process simply because the employee requests an accommodation which the employer is not obligated to give or fails to provide exact information.

Lastly, and perhaps most importantly, employers must recognize that a company is considered to know what any of its supervisors know. It is imperative that employers train their supervisors and managers to recognize what



could be a request for accommodation, and the necessity of timely and accurately reporting these requests up the chain of command. A supervisor's failure to understand his or her obligations in the face of a request for accommodation can cause employers huge and costly headaches.

If you have any questions about this decision, or would like our assistance in providing supervisor and management training with respect to the NJLAD and other employment laws, please contact a member of Archer's Labor and Employment Department at (856) 795-2121.

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