Leave Laws Overview
ADA

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OVERVIEW OF THE ADA

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THE PRIMA FACIE CASE

To establish a prima facie case of disability discrimination, a plaintiff must show by a preponderance of the evidence that: (1) his employer is subject to the ADA or CFEPA; (2) he was disabled within the meaning of the statute; (3) he was otherwise qualified to perform the essential functions of his job, with no accommodation or with a reasonable accommodation; and (4) he suffered an adverse employment action because of his disability. Alleva v. Crown Linen Serv., 2016 U.S. Dist. LEXIS 121277, at *3-4 (D. Conn. Sept. 8, 2016).

IS THE EMPLOYEE DISABLED?

The Connecticut Fair Employment Practices Act protects employees with physical or mental disabilities. A physical disability is, "any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or from illness, including, but not limited to, epilepsy, deafness or hearing impairment or reliance on a wheelchair or other remedial appliance or device". C.G.S. §46a-51(15).

The Connecticut Fair Employment Practices Act protects employees who are not disabled but who are regarded as having a disability. Desrosiers v. Diageo N. Am., Inc., 314 Conn. 772 (2014).

IS THE EMPLOYEE DISABLED?

The ADA protects employees who have, "a physical or mental Impairment that limits one or more of the major life activities of an individual."

Employees who have a record of such an impairment.

Employees who are regarded as having such an impairment.

IS THE EMPLOYEE DISABLED?

Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

Major life activities also include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

IS THE EMPLOYEE DISABLED?

Under the ADA, a substantial limitation does not mean a severe or significant restriction, but rather means that the individual is restricted as to the condition, manner or duration under which the employee can perform the activity as compared to most people in the general population. 29 C.F.R. §1630.2(j)(1).

CRITICAL CHANGES UNDER THE ADA

The definition of disability in this Act shall be construed in favor of broad coverage to the maximum extent permitted...

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active....

Whether an impairment is substantially limiting is determined without regard to the ameliorative effects of mitigating measures.

Scientific or medical analysis is not necessary to prove that a person is disabled.

IS THE EMPLOYEE QUALIFIED?

To be a "qualified" employee with a disability under the ADA, an employee must be able to perform the essential functions of a position, either with no accommodation or with a reasonable accommodation. An employer is never required to remove an essential function.

FACTORS TO CONSIDER

Whether the employer actually requires all employees in the position to perform the allegedly essential function.

Whether the reason the position exists is to perform that function.

The number of employees available to perform the function or among whom the function can be distributed.

The degree of expertise or skill required to perform the function.

EVIDENCE CONSIDERED

Employer judgment.

Any written job description.

The actual work experience of employees in the job.

The time spent performing a function.

The consequences of not requiring that an employee perform the function.

The terms of any collective bargaining agreement.

QUESTION OF FACT

While Courts will give substantial deference to an employer's judgment as to whether a function is essential to the proper performance of a job, determining the essential functions of a job is "a fact-specific inquiry into both the employer's description of a job and how the job is actually performed in practice." Alleva v. Crown Linen Serv., 2016 U.S. Dist. LEXIS 121277, at *12-14 (D. Conn. 2016).

THE INTERACTIVE PROCESS

The ADA envisions an "interactive process" by which employers and employees work together in good faith to assess whether an employee's disability can be reasonably accommodated. 29 C.F.R. §1630.2(o)(3). Either party can be responsible for a breakdown in the interactive process.

THE INTERACTIVE PROCESS

An employer acts in bad faith when it fails to make reasonable efforts to help the employee determine what specific accommodations are necessary, withholds information, or fails to communicate or respond to requests. Santiago v. State DOT, 2014 Conn. Super. LEXIS 1520, at *17-18, 2014 WL 3715020 (Conn. Super. Ct. 2014).

THE INTERACTIVE PROCESS

Delay by an employer may be viewed as evidence of a failure to make a reasonable, good faith effort to identify and implement reasonable accommodations.

A delay in returning an employee from a medical leave - even if the employee is paid - can also be an adverse action which could be found to violate the ADA and/or the FMLA. Lewis v. Boehringer Ingelheim Pharms., Inc., 2015 U.S. Dist. LEXIS 1642 (D. Conn. 2015).

THE INTERACTIVE PROCESS

Under federal law, an employee may not recover based on the employer's failure to engage in good faith in the interactive process unless he can show that a feasible reasonable accommodation existed. Stevens v. Rite Aid Corp., 2017 U.S. App. LEXIS 4985, at *13 (2d Cir. 2017); Fiorello v. UTC, 2016 U.S. Dist. LEXIS 36360 (D. Conn. 2016).

STARTING THE INTERACTIVE PROCESS

If an employee says, "I need six weeks off to get treatment for a back problem . . . this is a request for a reasonable accommodation". EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship (October 17, 2002). Under Connecticut law, saying, "I need help" may be sufficient. Curry v. Allan S. Goodman, Inc., 286 Conn. 390 (2008).

"If the disability is obvious, which is to say, if the employer knew or reasonably should have known that the employee was disabled", there is an obligation to engage in the interactive process. Willoughby v. Connecticut Container Corp., 2013 U.S. Dist. LEXIS 168457 (D. Conn. 2013); Brady v. Wal-Mart Stores Inc., 531 F. 2d 127, 135 (2d Cir. 2008).

WHO SHOULD BE INCLUDED?

- Employee
- Supervisors
- Medical professionals
- Anyone else with necessary information

THE ROLE OF THE MEDICAL PROVIDERS

- As part of the interactive process, an employer can seek reasonable medical documentation sufficient to allow the employer to assess the need for accommodation. A failure to provide such documentation can justify the denial of accommodation.
- Employer medical inquiries and examinations must be, "job related and consistent with business necessity". Wide ranging inquiries may be a independent violation of the ADA.

INFORMATION TO BE EXCHANGED

- The employee should provide sufficient information as to the disability and need for accommodations, details about limitations and explanation as to how the requested accommodation would allow him to perform the essential functions.
- The employer must provide the information necessary to enable the employee to identify potential accommodations.

WHAT IS REASONABLE?

"Reasonable" is a relative term: it evaluates the desirability of a particular accommodation according to the consequences that the accommodation will produce.

A reasonable accommodation can never require the elimination of an essential function of a job. Stevens v. Rite Aid Corp., 2017 U.S. App. LEXIS 4985, at *12 (2d Cir. 2017).

WHAT IS REASONABLE?

To be reasonable an accommodation must be effective. Noll v. IBM, 2015 U.S. App. LEXIS 8357 (2d. 2015). The preferences of the employee should be given consideration, but the employer has the ultimate discretion to choose between effective accommodations. Id.

LEAVE OF ABSENCE?

- The ADA may require an employer to grant a leave of absence broader than that provided under the FMLA. The reasonableness of the leave depends on the attendant circumstances.
- No bright line test exists. An extended medical leave or even extensions on a leave may be a reasonable accommodation if it does not pose an undue hardship for the employer. Nandini v. City of Bridgeport, 2014 U.S. Dist. LEXIS 5581 (D. Conn. 2014).

INDEFINITE LEAVE?

A request for an indefinite leave of absence with no assurance that the plaintiff will ever be able to perform the essential duties of his position is never a reasonable accommodation.

The disabled employee must have a good prognosis of recovery or improvement when the leave is requested, "such that an employer is not put in an untenable position of having to accede to requests for leave that have no foreseeable or proximate termination date".

BURDEN OF PROOF

The employee bears the burden of both production and persuasion as to the existence of an accommodation that would permit him to perform the essential functions of a position. If the employee meets that burden, the analysis shifts to the question of whether the proposed accommodation is reasonable.

The employee bears a burden of production with respect to the reasonableness of the proposed accommodation, which he satisfies by suggesting a "plausible" or "feasible" accommodation, the costs of which, facially, do not clearly exceed its benefits. If the employee does this, he has made out a prima facie case.

BURDEN OF PROOF

If a prima facie case is established, the employer's burden of persuading the fact finder that the employee's proposed accommodation is unreasonable merges, in effect, with its burden of showing, as an affirmative defense, that the proposed accommodation would cause it to suffer an undue hardship.

STATUTE OF LIMITATIONS

Most Courts have held that in a failure to accommodate case the statute of limitations begins to run when an employer unambiguously rejects a requested accommodation.

UNDUE HARDSHIP

"Undue hardship" means significant difficulty or expense, and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation.

A claim of undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense.

FACTORS TO CONSIDER

- **The nature and cost of the accommodation needed;**
- **The overall financial resources of the facility;**
- **The number of persons employed at this facility;**
- **The effect on expenses and resources of the facility;**
- **The overall financial resources, size, number of employees, and type and location of facilities of the employer;**
- **The type of operation of the employer; and**
- **The impact of the accommodation on the operation of the facility.**

DIRECT THREAT

A "direct threat" is defined as a "significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation." 42 U.S.C. §12111(3).

The determination that an individual poses a "direct threat" or safety risk must be based upon an individualized assessment of the individual's ability to safely perform the essential functions of the job. 29 C.F.R. §1630(2).

This assessment must be based upon a "reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence."

FEDERAL PREGNANCY DISCRIMINATION ACT

- A normal pregnancy is not a disability. But pregnancy related complications may constitute a disability.
- Discrimination based on pregnancy, childbirth or related conditions constitutes unlawful sex discrimination. An employer who treats women affected by pregnancy or a related condition less favorably than other employees who are similar in their ability or inability to work may be liable under Title VII. Young v. United Parcel Service Inc., 130 S. Ct. 1338 (2015).

CONNECTICUT PREGNANCY LAW

- Prohibits discrimination on the basis of pregnancy, childbirth or related conditions, including breastfeeding or expressing milk at work.
- Employers must provide reasonable accommodations to employees and applicants due to pregnancy, childbirth, or need to express milk or breastfeed while at work – unless doing so would pose an undue hardship.

REASONABLE ACCOMMODATIONS UNDER CONNECTICUT LAW

- Being permitted to sit, longer or more frequent breaks, periodic rest, assistance with manual labor, job restructuring, light duty, modified work schedules, temporary transfers, time off to recover from childbirth, breaktime and appropriate facilities for expressing milk.
- An employer cannot require that an employee take a leave of absence if another accommodation could be provided.
- An employer cannot require the employee to accept accommodation if she can perform the essential duties without accommodation.