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Employee Medical Conditions Without Request for Accommodation

By Jeffrey Campolongo All Articles

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Jeffrey Campolongo

What are the responsibilities of an employer when an employee announces a medical condition but does not specifically ask for an accommodation?

The U.S. District Court for the Eastern District of Pennsylvania helped clarify this question in *Thomas v. Bala Nursing & Retirement Center*, Civ. Action No. 11-5771, 2012 U.S. Dist. LEXIS 91920 (July 3, 2012). The case makes clear that employers need to take initiative to follow up with employees who inform their supervisors of medical conditions that could be affecting their work, even if it is only affecting their ability to get to work on time. The lack of an interactive process with the employee about the possibility of a reasonable accommodation can be sufficient for the employee to avoid summary judgment.

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In *Thomas*, Aqila Thomas was employed by Bala Nursing & Retirement Center as a licensed nurse practitioner and charge nurse. According to the decision, Thomas was informed she was terminated due to an ongoing tardiness problem. Following her termination, Thomas filed suit under the Americans with Disabilities Act and the Pennsylvania Human Relations Act on the basis of unlawful discrimination, failure to accommodate and retaliation for asserting a claim under the Family and Medical Leave Act. According to the decision, Thomas contended that her occasional lateness, which was generally less than 10 minutes, was due to extreme fatigue caused by anemia.

Before the court was Bala's motion for summary judgment, in which Bala contended that Thomas had no "justifiable excuse" for her tardiness. The motion was denied, as Thomas' deposition testimony illustrated that there were material issues of fact and a reasonable trier of fact could find that termination for "tardiness" was a pretext for discrimination.

Under the ADA, an employer commits unlawful discrimination if it does not "make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an ... employee" unless it is shown that it would "impose an undue hardship on the operation of the business." Regulations enforcing the ADA explain that, "to determine the appropriate reasonable accommodation, it may be necessary for the [employer] to initiate an informal, interactive process" with the employee. The case law interpreting the statute and its regulations has consistently trumpeted the significance of the interactive process.

In *Thomas*, it was undisputed that no interactive process concerning a possible reasonable accommodation ever took place. The next question for the court was whether the employer had sufficient notice of the employee's

disability and corresponding need for accommodation. Relying on the U.S. Court of Appeals for the Third Circuit's edict in *Taylor v. Phoenixville School District*, 184 F.3d 296, 313 (3d Cir. 1999), the district court concluded that "what matters under the ADA are not formalisms about the manner of the request, but whether the employee or a representative for the employee provides the employer with enough information that, under the circumstances, the employer can be fairly said to know of both the disability and desire for an accommodation."

The court considered whether there was evidence to show that Bala was actually put on sufficient notice of Thomas' disability to have initiated the interactive process. In its motion for summary judgment, Bala insisted that Thomas never made a specific request for a reasonable accommodation or even implied that an accommodation was

accommodation.

where she explained to her supervisors that her health condition was what caused her to be fatigued and to arrive late to work.

Because the summary judgment standard required the court to view the evidence in the light most favorable to Thomas, the court concluded that there was a genuine issue of material fact as to whether Bala was put on notice of Thomas' purported need for an accommodation. For Thomas to be successful on her failure to accommodate claim at trial, however, she would have to show that a reasonable accommodation exists and that it would not cause undue hardship to Bala's business.

An integral part of the court's overall reasoning related to the fact that no interactive process even occurred. To wit, the court wrote: "While the record does not seem to indicate that plaintiff asked for a specific accommodation, we are unable to conclude that one might not exist where no interactive process was ever engaged in to determine what such an accommodation would be. We therefore conclude that it is a question of fact whether forgiving plaintiff's tardiness would be a reasonable accommodation."

In addition to her aforementioned ADA claims, the plaintiff also brought a claim of interference and retaliation under the FMLA. To make out an FMLA interference claim, an employee only needs to show that he or she was denied benefits to which he or she was entitled. According to the opinion, when Thomas made a request for FMLA leave in January due to her anemia, she was allegedly told she would have to wait until April. The court noted that there is support for the proposition that telling an employee to take leave at a different time than was requested constitutes interference with FMLA-protected rights, citing *Williams v. Shenango*, 986 F.Supp. 309, 320-321 (W.D. Pa. 1997), finding that the denial of an FMLA-qualifying leave and suggestion that it be taken a week later could be construed as interference.

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