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DOCUMENTATION, DOCUMENTATION, DOCUMENTATION #2

10/24/19

Careful documentation by employers in their response to an employee's request for an accommodation due to a disability will protect them from allegations of failing to accommodate an employee in violation of the New Jersey Law Against Discrimination ("NJLAD"). In the recent case Richter v. Oakland Board of Education, the employer did not carefully document its response to the plaintiff, Richter, who requested an accommodation from her employer following extensive injuries she sustained on the job in her classroom following a seizure. The New Jersey Appellate Court ruled that it was unclear whether any accommodation had been granted.

Richter is a science teacher and a diabetic. One day in class, she had a seizure rendering her unconscious. The students witnessed her seizure and subsequent fall, in which she struck her head and face on a lab table and the floor, resulting in extensive bleeding and major injuries, including: total loss of smell; meaningful loss of taste; dental and facial trauma; tinnitus; insomnia; tingling in her fingers; extraction of her right front tooth; implantation of a dental bridge, and bone grafts; altered speech; pain, vertigo; dizziness; and emotional distress. In her lawsuit, Richter claimed this seizure and resulting injuries occurred because the Board denied her the accommodation of a lunch period earlier in the day, which caused her blood glucose levels to drop and her resultant diabetes-related seizure.

At the beginning of the 2012-2013 school year, the plaintiff received her first marking period schedule, in which she was assigned to a lunch period which began at 1:05 p.m. on Wednesdays and Thursdays. The plaintiff believed that waiting until 1:05 p.m. to eat a meal would have a negative effect on her blood sugar levels because of the medications she takes for diabetes. Therefore, she asked the principal of the school to change her schedule so she could have lunch during an earlier period. The principal responded that he would "look into it." After the principal failed to respond to the plaintiff, she sent two follow-up emails reiterating her need for a schedule change because of her medical condition. When the principal did not respond, she sent a third email to which he finally responded. His response was that he would look into her request, but warned he could not "undo what he did." Because she did not receive an answer, the plaintiff took glucose tablets during the periods leading up to her late lunch period to maintain her blood sugar levels. When plaintiff received her schedule for the second marking period, her lunch was scheduled for an earlier period every school day, which accommodated her. However, for the third marking period, she was again scheduled for lunch on Tuesdays at 1:05 p.m. When she reminded the principal that she needed to eat during an earlier period because of her medical condition, he told her that he could not provide her with an earlier lunch period because he needed her for a cafeteria duty period to which he needed to assign three teachers. He then suggested that if she was not feeling well, she should sit down to have a snack, and return to cafeteria duty when she was feeling better. In addition, the employer alleged that the vice principal told the plaintiff she should skip cafeteria duty and her union president instructed her that she would not be disciplined for skipping cafeteria duty. Under the New Jersey Law Against Discrimination, an employer is not required to provide an employee with the exact accommodation that an employee suggests, if other reasonable accommodations can be provided instead, and it is arguable whether the above actions constituted a reasonable accommodation.

The principal never directed anyone in the school's office to change plaintiff's schedule, and did not otherwise note a change was made to accommodate her medical condition. Plaintiff believed that the school's official schedule had to be revised in writing; otherwise, she was still obligated to remain on cafeteria duty on Tuesdays. Under the impression that unless an official change was made, she could not eat her lunch while supervising students during her cafeteria duty, the plaintiff "soldiered on" by taking glucose tablets to maintain

her blood sugar levels in order to teach. Her blood sugar levels on Tuesdays often fell below the normal range as she approached the end of the class prior to her late lunch period, requiring her to take multiple glucose tablets to try to keep her blood sugar elevated. Unfortunately, on Tuesday, March 5, 2013, towards the end of the class before her late lunch, she had the seizure described above.

After the seizure, the principal sent a number of text messages to the plaintiff telling her that he previously told her not to attend cafeteria duty on Tuesdays. When the plaintiff again asked the principal to make some documented change in her schedule, he placed an X on her schedule where it indicated she had cafeteria duty on Tuesdays. Unfortunately, the principal's actions were "too little, too late." In order to avoid liability, the principal should have made written changes to the plaintiff's schedule at the time he claims he provided her with an accommodation.

The Richter case demonstrates that employers who wish to avoid liability for failure to accommodate an employee need to document their actions. Otherwise, employers run the risk of having an employee claim that the employer never accommodated their requests.

TAKEAWAY: Document your actions in response to an employee's request for an accommodation.

If you are an employer with questions about what you can do to minimize employment law claims against your business in New Jersey, contact [Stephanie Gironda](#) or any member of the Wilentz Employment Law Team at 732-352-9858.

Attorney

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