

July 29, 2021

New Jersey Supreme Court Makes Clear That No Adverse Action Is Required for Failure-to-Accommodate Claims

The New Jersey Supreme Court has unanimously ruled that an employee claiming an employer failed to accommodate a disability under the New Jersey Law Against Discrimination (NJLAD) need not establish a specific adverse employment action (such as termination, demotion or suspension). Rather, the Court held that an employee may make such a claim based on mere evidence of an employer's inaction in reasonably accommodating a disability.

Case Overview

Mary Richter is a teacher who suffers from diabetes. In order to regulate her blood sugar, she had to eat lunch at a certain time every day. Richter was assigned to cafeteria supervision duty at a time that caused her to delay eating her lunch, which she felt affected her blood sugar level and required her to take glucose pills to regulate. On several occasions, Richter asked the school's principal for an accommodation in the form of earlier cafeteria supervision duty. Eventually, the principal told Richter that she could skip cafeteria supervision duty on some days if necessary. However, despite Richter's several requests, the principal did not provide Richter permission in writing and treated her requests in a casual manner. Richter did not think she should skip cafeteria supervision duty unless she had written permission to do so, believing she would be held accountable if children were injured during her scheduled time.

One day, during her cafeteria supervision duty, Richter suffered a hypoglycemic event, which caused her to fall and hit her head. The fall resulted in serious and permanent injuries, including dental and facial trauma, altered speech, neck pain and pain radiating to her posterior shoulder. Richter filed a claim under the NJLAD alleging that her employer failed to accommodate her disability.

In its June decision, the Court acknowledged the legal uncertainty under the law and looked to the NJLAD's legislative intent as well as interpretations of the federal Americans with Disabilities Act for guidance. The Court held that an adverse employment action is not an element of a failure-to-accommodate claim and that an employer's failure to perform its duty — whether through inaction, silence or inadequate response to a reasonable request—is an actionable harm in violation of the NJLAD. However, the Court noted that while an adverse action is not a required element, a lack of demonstrable consequences may impact the damages to which an employee is entitled.

Takeaways

The New Jersey Supreme Court's clear declaration that no adverse action is needed in a failure-to-accommodate claim may significantly increase potential liability for New Jersey employers. Therefore, employers must make every effort to engage in an interactive process with employees who request accommodation of a disability. This is particularly important as workplaces are returning to in-person work after the pandemic. As vaccination rates plateau or fall and COVID-19 variants continue to emerge, it is likely that employees may raise concerns or questions in person, on the phone, via text or via email regarding their medical conditions and potential need for accommodation. Employers should treat any employee inquiry as a

potential request for accommodation, proactively engage in the interactive process and document their efforts to reasonably and in good faith provide accommodation.

Authors



Francine Esposito

Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com



Heather Weine Brochin

Partner

Parsippany, NJ | (973) 966-8199

New York, NY | (212)-297-5800

hbrochin@daypitney.com



Naju R. Lathia

Partner

Parsippany, NJ | (973) 966-8082

nlathia@daypitney.com



Rachel A. Gonzalez

Partner

Parsippany, NJ | (973) 966-8201

New York, NY | (212) 297-5800

rgonzalez@daypitney.com



Theresa A. Kelly

Partner

Parsippany, NJ | (973) 966-8168

tkelly@daypitney.com