

ARIZONA

EMPLOYMENT LAW LETTER

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Interactive process not triggered until employee brings up need for accommodation

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The Americans with Disabilities Act (ADA) prohibits covered employers from discriminating against a qualified individual with a disability. It also requires employers to provide reasonable accommodations to qualified individuals with a disability. Failure to accommodate an employee when a reasonable accommodation is available is a violation of the law. But employers aren't required to provide the requested or specific accommodation, so long as an available reasonable accommodation is provided. Whether a particular accommodation is provided is determined by the employer and the employee during the interactive process. When is an employer's obligation to engage in the interactive process triggered?

What you need to know

Paulina Buhagiar had worked for Wells Fargo Bank for about two years when she informed her supervisor she was experiencing chest pains and having a hard time breathing. She was rushed to the emergency room by the paramedics, treated for cardiac arrhythmias, and prescribed medication. She received a full work release, which identified her medical condition.

According to Buhagiar, she “immediately sought an accommodation based on her medical condition” but was unaware of the process. Her supervisor allegedly told her she would need to “call the sick line everyday she needed an accommodation.”

The bank claims Buhagiar had requested a leave of absence to resolve some personal issues before the medical incident and ultimately approved a six-month leave. She claims she received a medical leave of absence for six months, set to expire on August 6.

During her leave of absence, Buhagiar moved to Utah, where she worked for two other companies. When her leave concluded, she didn't return to work. The bank sent her a letter asking for information regarding her plans to return to work, informing her that her employment would be otherwise terminated.

Buhagiar never responded to the bank, and her employment was terminated. Instead, she filed a lawsuit against the bank alleging, among other things, disability discrimination.

Is the employee actually disabled?

The bank asked the court to enter judgment in its favor and dismiss Buhagiar's lawsuit, claiming she could not show she was disabled or that she triggered the bank's duty to engage in the interactive process. It also asserted she failed to identify her requested accommodation.

The court acknowledged that the return-to-work release Buhagiar provided to the bank indicated her medical condition. But her actions weren't sufficient to put the bank on notice of her desire for an accommodation, such that it would trigger the interactive process. The court also noted that the fact she had two other employers during her leave of absence, without an apparent accommodation, undercut her claim she was disabled within the meaning of the ADA.

The court found Buhagiar was unable to show she was qualified for her position. “Most obviously,” the court noted, her “refusal to return to work,

her move to Utah, and her employment with two other companies during her leave of absence show that she was not qualified to work” for the bank. As a result, the court found her claims failed.

Takeaway

While it was Buhagiar’s own actions that doomed her claims, the case also highlights the importance of being sensitive to your employee’s needs and potential for a reasonable accommodation. The information on Buhagiar’s work release was insufficient to trigger the interactive process, but that won’t always be the case.

Once an employee notifies you of the need for a reasonable accommodation, you must undergo an interactive process to assess the potential accommodation. The duty to accommodate and engage in the interactive process is ongoing and isn’t exhausted by one effort.

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