Shannon S. Pierce and Geenamarie Carucci Vance are attorneys with Fennemore Law in Reno, Nevada. You can reach them at spierce@fennemorelaw.com and gcarucci@fennemorelaw.com. ■

DISABILITY

Failure to disclose disability dooms employee's accommodation request

AK	AZ	HI	NV	OR	WA

by Jodi R. Bohr, Tiffany & Bosco, P.A.

The Americans with Disabilities Act (ADA) requires employers to provide qualified individuals with a disability with a reasonable accommodation, but only after the disability is made known or, at the very least, the interactive process is triggered by the employee. Discharging an individual because of a disability or failing to accommodate an individual's known disability is a violation of the ADA.

But when is the requirement for employers to engage in the interactive process triggered? Just what information is sufficient to put an employer on notice that an employee has a disability and needs a reasonable accommodation?

Setting the scene

Sherri Haahr was hired as the Human Resources (HR) generalist for Ovations Food Service. Shortly after she was hired, Haahr requested a "personal leave of absence" and submitted a doctor's note excusing her from work for 14 days, after which she may return without restrictions.

Haahr's supervisor denied the request, stating that Haahr hadn't been employed by the company long enough to be eligible for the requested leave. Her supervisor stated that she expected Haahr to return to work the next day as scheduled, or she will be considered to have resigned from her employment.

Haahr responded and converted her leave request to a "disability leave of absence." She noted that a disability leave request didn't require a minimum length of service with the company. Her supervisor again denied her request and stated that Haahr's leave request "does not provide any information regarding a disability."

When Haahr failed to return to work the next day, her supervisor emailed her, stating, "We accept your failure to return to work today as your resignation." After receiving the termination email, Haahr became upset and emailed her supervisor three times, none of which provided her supervisor with additional information related to her disability leave request. The company didn't respond to her emails.

Litigation ensued

Haahr filed a discrimination charge with the Equal Employment Opportunity Commission (EEOC), which ultimately determined that it found "reasonable cause to believe that [the company] violated the ADA when it denied [her] request for a reasonable accommodation for her disability and when it discharged her from employment." Haahr sued in Arizona District Court.

The company asked the court to enter judgment in its favor and dismiss Haahr's lawsuit, claiming she failed to adequately advise the company of her disability, which left it without the duty to engage in the interactive process. The company also asserted that Haahr's failure to disclose her disability meant that it couldn't have terminated her "because of" her disability. The court agreed.

No reason to know of disability

During the litigation, Haahr disclosed that she suffered from depression, anxiety, and migraines — disabilities, the court acknowledged, that aren't the sort of medical conditions that are open, obvious, or apparent.

Additionally, Haahr had always performed her job satisfactorily prior to her leave request, giving the company no reason to know that she had any disability.

So, the court closely examined Haahr's leave requests, noting that they failed to put the company on notice of her disability in a manner sufficient to trigger the interactive process. Specifically, the court noted that neither Haahr nor her doctor mentioned any medical condition, disability, or related limitation that would necessitate her leave request. For these reasons, the court found that Haahr's claims failed.

A closer look . . .

While it was Haahr's own actions that doomed her case, this case also highlights the importance of a supervisor being sensitive to an employee's needs as it relates to a potential need for a reasonable accommodation. In this case, the information on the work release was insufficient to trigger the interactive process, but that won't always be the case.

Perhaps the supervisor could have followed up with the doctor, as the note encouraged, to determine whether Haahr would have been eligible for leave as a reasonable accommodation. While the employer wasn't found to be liable, it did so after years of defending its actions first with the EEOC and then in court.

Jodi R. Bohr, an attorney with Tiffany & Bosco, P.A., practices employment and labor law, with an emphasis in HR management counseling, litigation, class actions, and other HR matters. Bohr's determination and responsive style consistently earn client trust and confidence, as well as successful results. She may be reached at jrb@tblaw.com or 602-255-6082. ■