

A Refresher on Reasonable Accommodations under the Missouri Human Rights Act

Labor & Employment Law Update

By Timm Schowalter on April 7, 2022



A recent case provides a refresher step-by-step guide on the requirements of a lawfully administered disability accommodation policy under the Missouri Human Right Act. In *Loerch v. City of Union*, No. ED. 109707, (Mo. App. E.D. 2022) the Missouri Appellate Court reversed and remanded a summary judgment decision in favor of the city of Union for claims made by a custodian alleging disability discrimination when he was forced to retire after his accommodation request, to

limit working outside due to his coronary artery disease, was denied. In doing so, the court set forth a practical guide for employers to follow.

Step 1- Substantial Limitation – Broad Review of Restrictions

The Missouri Human Right Act defines “disability” slightly differently than the federal American with Disabilities Act, as amended (ADA). Unlike the ADA, the MHRA incorporates reasonable accommodation in the definitional term disability. The MHRA defines disability as follows:

“Disability”, a physical or mental impairment which substantially limits one or more of a person’s major life activities, being regarded as having such an impairment, or a record of having such an impairment, which with or without reasonable accommodation does not interfere with performing the job, utilizing the place of public accommodation, or occupying the dwelling in question

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Section 213.010 (5). In *Loerch*, the court determined the first threshold disability inquiry was whether the employee's medical condition substantially limited a major life activity. Only one such "major life activity" is the activity of working. The court further explained that a substantial limitation on the major life activity of working means the person is "significantly restricted in the ability to perform either *a class of jobs or a broad range of jobs in various classes*." The inability to perform a single, particular job does not amount to a substantial limitation.

Accordingly, in step one, the threshold "disability status" determination requires an analysis of whether the employee's medical condition actually limits a "broad range" or a "class of jobs" not just a particular job unique to the employee's job duties—that occurs in step two. Obviously, the employer should rely on medical documentation provided by the employee's or employer's physician in making such a determination and maintain sufficient documentation to support its determination. The important reminder, however, is not to narrow the scope of the "substantial limitation" analysis to the employee's particular job.

Step 2- Essential Job Functions – Job Descriptions Consistent with Reality?

Step two of the threshold disability inquiry is determining "essential job function." The *Loerch* court explained that the essential function analysis is necessarily limited to whether the restricted function—the aspect of the job the employee cannot do—was essential. In *Loerch* the only aspect of the job the employee could not do was working outdoors in extreme temperatures. Thus, was it essential that the plaintiff be able to perform the outdoor tasks at all times, even in extreme weather? In answering "what is essential" the *Loerch* court relied on EEOC regulations that set forth the relevant factors for determining "essential":

(1) the employer's judgment as to which functions are essential; (2) written job descriptions prepared before the employer began advertising or interviewing for the position; (3) the amount of time on the job spent performing the function; (4) the consequences of not requiring the employee to perform the function; and (5) the past or current work experience of employees in similar jobs.

29 C.F.R. § 1630.2(n)(1). Interesting to note, the employer in *Loerch* had substantial evidence to support its position that working outdoors in extreme temperatures was essential for the custodian position. But the court that had properly articulated the "totality of circumstances" standard paradoxically relied on just one factor, dispute of fact over frequency, to remand the case. In support of its ruling, the court relied on evidence that the employer's actual practices were contrary to the written job description that would allow a factfinder to discount employer's judgment or written job description.

Thus, when making a disability determination under the MCHR it is imperative to closely scrutinize written job descriptions to ensure they accurately set forth the true essential duties that mirror the realities of the workplace.

Step 3- Reasonable Accommodation – Perform an Individual Assessment

The Missouri Appellate Court has previously instructed that whether a particular proposed accommodation is reasonable under the MHRA depends on the facts of the case and requires the employer to conduct an individual assessment. Under the MHRA regulations, accommodations may include “[j]ob restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters and other similar actions.” 8 CSR 60-3.060(1)(G)2.B. The regulations set out a list of non-exhaustive factors to be considered when determining whether an accommodation is reasonable, including the nature and cost of the accommodation and the size and nature of a business. 8 CSR 60-3.060(1)(G). Accommodations that impose undue financial and administrative burdens or requires fundamental alterations is not considered “reasonable” under the MHRA.

In *Loerch* the employer determined that the requested accommodation of requiring other employees to conduct all tasks in extreme weather was per se unreasonable. The court rejected the employer’s per se argument outright because it failed to conduct the individual assessment. The take away, therefore, is to conduct an individual assessment that documents the justifications behind a per se approach. Yes, it does seem to be form over substance, however, documentation is not only a good HR practice – it wins cases.

In summary, the *Loerch* case provides employers with some practical reminders of how to properly administer their disability policies including broad review of an employer’s restrictions, ensuring job descriptions accurately set forth the essential job functions, and most importantly to conduct and document individualized assessments of requested accommodations.

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