

ADA Claims to Proceed to Jury Trial Despite Safety Concerns

Labor & Employment Law Update

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A federal court in Indiana ruled recently that a GE manufacturing employee could present her ADA claims to a jury despite concern that accommodating her disability posed a safety risk. Cindy English's permanent restrictions prevent her from reaching above her head. She was awarded a repair operator position based on seniority but GE's medical staff concluded her restrictions prevented her from performing the job.

English suggested she could perform the job if she used a stool. GE considered allowing English to demonstrate whether she could perform the job using the stool, but ultimately concluded without the demonstration that using a stool so close to an assembly line posed a safety hazard and gave the position to another employee.

This case illustrates how important it is for employers to fully engage in the interactive process. Despite a formal process for addressing accommodation requests and evidence that it engaged in an interactive process, at least to some extent, the judge still found GE's efforts lacking. She noted that the suggested demonstration could have definitely shown whether the stool would have allowed English to perform the job and whether using the stool posed a safety hazard. Had GE gone through with the demonstration and legitimately concluded that the stool did in fact pose an unacceptable safety risk, it is likely the judge would have granted GE's motion for summary judgment and dismissed English's claims.

How do you avoid a similar fate? As soon as you learn of a possible accommodation request, engage the employee and document the interactive process. Provide the employee with a current and accurate job description and ask the employee in writing:

1. Can you perform the essential functions of your job at this time?
2. Could you perform the essential functions of your job with reasonable accommodation? If so, suggest reasonable accommodations that will allow you to perform the essential functions of your job.

3. If you cannot perform the essential functions of your job with reasonable accommodation now, will you be able to do so in the foreseeable future?

a. If so, when?

b. If not, is there an open position for which you are qualified that you believe you can perform with reasonable accommodation?

While the employee may not dictate what reasonable accommodation the employer provides, employers have an affirmative obligation to engage in the interactive process and to provide accommodations that are reasonable. The questions outlined above open the interactive process dialogue the ADA requires. From there, the ADA requires employers to assess each case individually and make decisions on a case by case basis. It is essential that employers have experienced employment counsel involved from the onset to avoid falling into the ADA's many traps.

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