

Employer Not Liable under the ADA for Failure to Accommodate Employee's Disability

Labor & Employment Law Update

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A recent 7th Circuit case, *Hooper v. Proctor Health Care, Inc.*, Case No. 14-2344 (7th Cir. 2015), serves as a reminder that a plaintiff cannot state a failure to accommodate claim under the Americans with Disabilities Act ("ADA") if the plaintiff's physical or mental limitations do not affect the plaintiff's ability to perform essential job functions.

In *Hooper*, an employee diagnosed with bi-polar disorder prior to being hired by Proctor, requested time off after an incident that took place outside of work. He disclosed his diagnosis to the Director of Human Resources when he asked for medical leave. During that discussion, the Director of Human Resources mentioned her contentious relationship with her mother-in-law who was bipolar. She reported her conversation with the employee to the Vice President of Human Resources and the employee was put on medical leave.

The next month the employee's doctor determined that the employee could return to work. For the safety of its employees, Proctor had an independent medical exam (IME) performed. The IME doctor verbally confirmed that the employee was able to return to work. A written report followed two weeks later, in which the IME doctor stated that the employee could return to work with *no restrictions*. The IME doctor suggested steps Proctor could take to help alleviate the employee's stress and improve performance, such as a modified work schedule, sick days and regular performance evaluations. Proctor tried multiple times to contact the employee about returning to work; however, the employee could not be reached. After two weeks, Proctor sent a letter to the employee telling him he had been cleared to return to work and he would be terminated if he did not return by the end of that week. The employee did not respond or return to work by the deadline, and the employee was terminated.

The employee sued Proctor for disability discrimination and retaliation. Although he alleged general disability discrimination in his complaint, in response to Proctor's summary judgment motion, the employee claimed Proctor failed to accommodate his disability by not discussing the IME doctor's suggestions. The 7th Circuit found that the claim failed because the employee could perform his

job without regard to his bipolar disorder and he required no accommodations. A failure to accommodate claim under the ADA arises only when an employee *requires* an accommodation. As a procedural aside, the claim also failed because the employee did not plead sufficient facts to put Proctor on notice that he was making a failure to accommodate claim.

The 7th Circuit also found that the employee could not prove disability discrimination. As discussed in our previous post, the Court continued to question the use of the indirect and direct methods of proof under the *McDonnell Douglas* framework, and ultimately found that no rational jury could find Proctor discriminated against the employee. Proctor made numerous efforts to contact the employee about returning to work. There was no reason to believe that the termination was related to anything but the employee's failure to return to work. The remark by the Director of Human Resources about her mother-in-law was not evidence of any bias, but was simply a stray remark with no casual connection to the termination.

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