

# Failure to Engage in Ongoing, Individualized Interactive Process Could Cost Millions

## Labor & Employment Law Update

on February 22, 2016

A bit of strategic planning could have saved an employer from a federal jury's \$5.5 million verdict for a mechanic who claimed his accommodations were discontinued after eight (8) years. A heavy equipment mechanical repairman was subject to medical restrictions for lifting, climbing, and postural limitations. Despite these restrictions, he performed the essential functions of the job with accommodations. This all changed on December 28, 2011 when he returned to work from an unrelated gallbladder surgery; his new supervisor noted his arthritis-related work restrictions and allegedly told him that no one was allowed to work in the department with limitations. All accommodations ceased.

The jury found that he was a qualified individual with a disability, who should have been provided with an accommodation, and was terminated because of his disability. Further, his employer failed to prove either that an accommodation would not be possible, or that he was a threat to his own or others' safety.

### What Should Have Happened?

Administrative agencies (like the EEOC and state/local counterparts) and courts expect employers to engage in the Interactive Process for individuals with known/disclosed disabilities to determine whether:

- The employer can provide an accommodation to remove barriers to enable the employee to perform the essential (non-marginal) functions of the job, and
- That the accommodation is reasonable.

If neither of those is true, the individual may not be a qualified individual with a disability, and therefore not protected under relevant civil rights laws.

In this situation, it seems that the employer's biggest mistake was suddenly deciding that years-old accommodations were no longer possible. If anything, the company should have re-addressed his individual needs by engaging in the process. Having done so, it could have then considered changing the accommodations.

## Interactive Process – Done Right

Every employee and employment situation is unique, so frustratingly there is no one-size-fits-all approach. However, some general steps for a successful Interactive Process include:

- First, meet with the employee. Inquire about any limitations from the known/ disclosed disability (of course, employers may not simply inquire whether any employee has a disability, as this would run afoul of these disability acts as well).
- Next, review the employee's ability to perform the essential, required job functions. Ask what, if any, accommodations are being sought.
- Consider in good faith the requested accommodations, or if none, what you can offer to assist the worker. If some are possible, implement them to enable the employee to be a productive worker; if none, carefully consider next steps, including perhaps an administrative termination.
- Finally, in tricky situations, consult with employment counsel.

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