

Recent Federal Court Decision Requires Employees to Shoulder Some of the Burden of Disability Accommodations

Labor & Employment Law Update

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The Americans with Disabilities Act (ADA) and the laws of many states generally require employers to provide “reasonable accommodations” to certain employees with disabilities. This requires the employer and employee to participate in an interactive process aimed at finding job changes that allow the employee to continue working. For many employers, that requirement raises many questions for which there are no simple, definitive answers—which forces employers to make accommodation decisions amid considerable uncertainty.

But the recent decision in *Dillard v. City of Austin, Texas*, from the U.S. Court of Appeals for the Fifth Circuit, may help employers handle situations when employees cause a breakdown in the interactive process. The plaintiff in the case, Derrick Dillard, was employed to operate machinery and perform manual labor until he was injured on-the-job in March 2011. Thereafter, he received FMLA leave and, after that ran out, additional discretionary leave. In early 2012, Dillard was cleared to return to work for the first time, albeit in a limited capacity that did not allow him to resume his former job.

In an effort to accommodate Dillard’s medical restrictions and return him to work, the City offered him a position as an administrative assistant, even though he had no relevant experience and his qualifications for the position were lacking. Dillard expressed reservations, but ultimately took the job in May 2012. As an attempt to ensure that Dillard succeeded as an administrative assistant, the City provided him typing and computer training, allowed him to “shadow” another administrative assistant, and provided Dillard access to additional training programs. But Dillard’s skills did not improve and he did not pursue additional training. Instead, he played computer games, made personal calls, repeatedly arrived late, left early, or missed work altogether—and lied about his work time. By September 2012, the City determined that Dillard’s performance was unsatisfactory, and terminated his employment.

Shortly thereafter, Dillard sued the City, alleging that it unlawfully failed to accommodate his disability and terminated him because of it. The trial court ruled against Dillard, and, on appeal, the Fifth Circuit stated that the law required Dillard “to make an honest effort to learn and carry out the duties of his new job with the help of the training the City offered him.” But because Dillard did not do that, the court determined that Dillard was solely responsible for the breakdown in the reasonable accommodation process, and the City was not liable under the ADA or Texas State law.

Now, employers should note that this decision is not necessarily the law of the land for the entire U.S., because decisions of the Fifth Circuit are controlling law only in the states of Louisiana, Mississippi, and Texas. Employers must also realize that reasonable accommodation cases are extremely fact-specific, which makes it unlikely that this outcome can be expected every time an employer faces an ADA lawsuit. In particular, if the City had not been so accommodating, and if the employee’s lack of good faith effort was not so clear, the case might have been decided differently.

The bottom line is that although employers must engage in good faith efforts to find a reasonable accommodation, the employee has the same obligation—so employers should not hesitate to document instances in which an employee stands in the way of making a successful accommodation, because such documentation may later provide a basis for disciplinary action, as well as a defense to claims of discrimination and failure to accommodate.

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