

Breast Cancer: US Court Validates Nurse's Right To Reasonable Accommodation From Her Employer During And After Treatment.

A licensed vocational nurse with three years seniority was diagnosed with breast cancer. Her employer granted her four months medical leave for surgery, chemotherapy and radiation treatment.

At the end of the four months her employer placed certain roadblocks in the path of her transition back into the workplace which resulted in the nurse filing a disability discrimination lawsuit. The US District Court for the Eastern District of California validated the legal premises behind her lawsuit.

Reasonable Accommodation Medical Leave

The nurse requested additional medical leave time beyond the four months that was initially granted. Her physician backed her up on the medical necessity for additional leave to complete treatment.

The employer, however, had a steady policy that no employee could have more than four months medical leave and would be terminated if he or she could not return to full duty after four months.]

The Americans With Disabilities Act (ADA) prohibits an employer from discriminating against a qualified individual with a disability.

Disability discrimination can include not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual, unless the employer can demonstrate that the accommodation would impose an undue hardship upon the employer.

A medical leave of absence can be a reasonable accommodation if it will permit the employee to pursue treatment after which the employee will be able to return to work.

Part-time and modified work schedules are another form that reasonable accommodation can take, if, again, it does not impose an undue hardship on the employer.

Employers are required to communicate with their employees on the subject of reasonable accommodation. Inflexible rules that have no business justification can be discriminatory.

UNITED STATES DISTRICT COURT
CALIFORNIA
April 28, 2005

The court ruled an inflexible leave policy which lacks any business justification cannot stand up against an employer's obligation of reasonable accommodation under the ADA. The court could find no actual hardship to the employer in allowing this nurse additional unpaid leave to complete her course of treatment.

Reasonable Accommodation Part-Time, Flexible Scheduling

Federal regulations state explicitly that part-time and flexible work scheduling is one form that an employer's obligation of reasonable accommodation to a disabled employee's needs may take.

In this case the court could find no justification for not allowing this nurse to work part-time after she returned from her cancer treatments. The employer would not even consider it. When an accommodation is requested the employer must make an effort to communicate with the employee about the employee's needs and must make an effort to accommodate those needs, up to the point that those needs will impose an unreasonable burden.

Reasonable Accommodation – Transfer

The court faulted the employer for its inflexible attitude toward the nurse's request to transfer to another facility owned by the same corporate parent that would reduce her daily driving commute by sixty miles. Again, by law, a transfer is something an employer must consider by way of reasonable accommodation and must grant a disabled employee's request unless there is undue hardship to the employer.

Reasonable Accommodation

New Position / Duty to Communicate

An employer is not required to create a new position just to fulfill a disabled employee's need for reasonable accommodation, i.e., an office position which would have kept the nurse off her feet, but nevertheless the employer must at least consider it under the obligation to communicate with a disabled employee. ***Velente-Hook v. Eastern Plumas Healthcare*, __ F. Supp. 2d __, 2005 WL 1039056 (E.D.Cal., April 28, 2005).**