

Disability Discrimination: Nurse Not Entitled To Keep Extraordinary Accommodation.

In a very complicated legal opinion, the US District Court for the Eastern District of New York ruled that a visiting nurse service did not commit disability discrimination against a former management-level nurse employee.

The nurse was badly injured in an off-the-job motor vehicle collision and was not able to continue in her position.

She was eventually offered flexible, part-time work on selected management-level projects, many of which she could do at home. The court pointed out that this arrangement was never looked upon as a regular position with the company and no formal job description was ever compiled.

At some point the projects the nurse was doing were merged into a newly-created management-level social worker position and the nurse was advised there was nothing left for her to do. Her part-time salary and full-time benefits ceased. She sued for disability discrimination.

No Right To Keep

Extraordinary Accommodation

The court's legal analysis focused on the purposes of the Americans With Disabilities Act (ADA), to help disabled persons obtain and continue gainful employment by outlawing discrimination and by requiring reasonable accommodation.

However, it is well settled that it would go far beyond reasonable accommodation to require an employer to create a new position just to meet a disabled employee's needs. That is extraordinary, not reasonable, accommodation.

The court was of the opinion that employers should be and will be encouraged to make voluntary extraordinary accommodations they have no obligation to make if employers who go beyond their obligation of reasonable accommodation are allowed to discontinue extraordinary accommodations when legitimate business considerations make extraordinary accommodations no longer realistic. Exarhakis v. Visiting Nurse Service of New York, 2006 WL 335420 (E.D.N.Y., February 13, 2006).

The courts have settled the issue that an employer need not create a new job just to accommodate the needs of a disabled employee. It is considered unreasonable or extraordinary accommodation.

The legal question in this case is whether an employer who offers an extraordinary accommodation beyond what is required by law, in this case a new job created solely to accommodate an employee who became totally disabled, can be liable for disability discrimination when continuing that accommodation becomes unrealistic for the employer.

For example, many case precedents have said that an employee has no right to have temporary light-duty assignments made permanent when the employee is unable to perform the essential functions of the permanent job the employee had when the employee became disabled or any other permanent job that exists within the organization.

Employers should not be penalized for exceeding their legal obligations.

UNITED STATES DISTRICT COURT
NEW YORK
February 13, 2006
