

A recent lawsuit filed by a disgruntled employee of the California Employment Development Department (EDD) concluded with an unpublished decision from the California Court of Appeal affirming the trial court's summary judgment ruling in favor of the employer. The employer's success story shows how patience and attentiveness to employee accommodation requests are a strategy for success.

Facts

An employee of the EDD since 2001, W. Regina White suffers from fibromyalgia and debilitating chronic pain, fatigue, and migraines. The EDD granted her accommodation requests beginning in 2003, allowing her to come in late, take time off, make up the time she missed, and take breaks.

While she was still working on a flexible schedule in 2013, conflicts arose between White and her new supervisor, Richard Cornelius. In a corrective e-mail, Cornelius said that White should “make the effort” to get to work on time and that if she was to be tardy, she needed to inform him upon her arrival and discuss how the time would be made up. During the few months she worked under him, she complained several times to his superiors and requested that she be allowed to telecommute or be transferred to another supervisor as an accommodation. She contended that his conduct was inappropriate.

On July 31, 2013, Cornelius responded to White's request for a month of leave “due to her medical condition” by asking for a new doctor's note to clarify whether the request involved an existing condition or a new condition. He also told her that under EDD rules, an absence without a doctor's note could be considered an automatic resignation. White claimed—and the EDD denied—that Cornelius made unprofessional comments to her, including asking her in public, “What is exactly wrong with you?”

Responding to White's requests for a new supervisor, EDD management stated that she hadn't provided the requested documentation about her conflict with Cornelius and made it clear that its employee assistance program and state disability insurance were available to her. She then asked Cornelius' direct supervisor, Qun Xu, to move her away from him. Xu encouraged her to consider other comparable jobs and suggested several potential options.

White eventually sought and obtained a transfer to a comparable position in a different office, retaining the same job classification, branch and division, and salary and benefits. She then filed suit, alleging the EDD discriminated against her on the basis of her disability, failed to reasonably accommodate her disability, and failed to engage in an interactive process to determine whether she could be accommodated. The trial court granted summary judgment in favor of the EDD. The court of appeal affirmed the trial court's decision on all of her claims.

DISABILITY DISCRIMINATION

EDD shows that patience pays off in reasonable accommodation cases

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Employers that are sued for disability discrimination and fail to provide reasonable accommodations or engage in the interactive process often face a Hobson's choice: Endure the inherent risks and uncertainties of a jury trial, or be held hostage to the unreasonably high settlement demands employees' lawyers make when an employer telegraphs its fear of the jury trial process. You can avoid that predicament if you can win a “summary judgment” motion—i.e., a request that the court rule in your favor because there are no facts in dispute and you should win the case without a trial.

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Disability discrimination

The key question in a disability discrimination case is whether an employer took an adverse action against a disabled employee because of her disability. In this case, the court of appeal determined that Cornelius' requests that White try to show up for work on time and follow EDD policy when she requested leave "did not materially and adversely affect the terms, conditions, or privileges of her employment."

An important element in the court's analysis was the fact that the EDD offered and granted White several accommodations during her months under Cornelius' supervision, and it ultimately granted her request to transfer to a new position. Although she felt slighted because she wasn't transferred to her preferred position, the EDD wasn't obligated to confer her preferred accommodation. It only had to offer a reasonable one, and it did that when it offered her a position that included the same salary, benefits, and privileges.

The court of appeal also rejected specific points White made in support of her argument that statements by Cornelius constituted adverse actions. In the court's view, none of his statements amounted to an adverse employment action because "a mere offensive utterance or even a pattern of social slights by either the employer or [the employee's coworkers] cannot properly be viewed as materially affecting the terms, conditions, or privileges of employment."

Reasonable accommodations

A "reasonable accommodation" is a modification or an adjustment of the work environment that allows a disabled employee to perform the essential functions of her job. An employee isn't entitled to her preferred accommodation; she is entitled only to a reasonable accommodation. When multiple options are reasonable, the employer may choose which of the options to adopt.

The court of appeal observed that White's accommodation request was a demand to change supervisors, but it held that the duty to accommodate doesn't go that far. The court noted that the EDD granted White "a variety of reasonable accommodations," including allowing her to take time off, approving two requested leaves of absence, allowing her to work a reduced schedule of 20 hours a week, temporarily allowing her to work under a new supervisor, and ultimately transferring her to a comparable position under a new supervisor.

The court also rebuffed White's argument that the EDD erred by rejecting her request to telecommute. Her position involved handling confidential personnel records, which couldn't be done from a remote location.

Interactive process

Finally, the court of appeal rejected White's claim that the EDD failed to abide by its duty to participate in the interactive process in good faith. The EDD promptly met

with her each time she requested an accommodation, discussed various accommodation options with her, granted all of her requests for leave and a reduced work schedule, and ultimately transferred her to a comparable position. *White v. Employment Development Department* (California Court of Appeal, 3rd Appellate District, 3/3/20).

Bottom line

Courts will recognize an employer's efforts to accommodate an employee with a disability, but you must be attentive, thorough, and responsive to win a disability discrimination case on summary judgment.

Reasonable accommodations are often a long-term project. The EDD's victory was built on more than a decade of patient, continuous accommodation efforts beginning in 2003. White's needs were attended to throughout the process, and the EDD consistently proposed alternative options when it couldn't meet her exact demands. She ended up in a comparable job with the same salary, benefits, and privileges. At each juncture, the EDD (and various levels of management within the agency) responded to her inquiries and explained why certain requested accommodations wouldn't work (e.g., her handling of confidential personnel records made her telecommuting request impractical).

Moreover, the court of appeal didn't reject White's telecommuting arguments out of hand. Instead, following case law, the court engaged in a fact-specific inquiry that assessed the reasonableness and good faith of the EDD's actions in light of White's job duties and the agency's confidential operations. The court's decision provides a cautionary lesson that employees' requests for telecommuting as an accommodation must be taken seriously and assessed in light of case law and specific job requirements.

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