

Dealing With Disabled Employees *Don't Lose the "Gotcha" Game*

By **Christine A. Page, Esq.**

A recent California court of appeal decision underscores just how important it is to follow proper procedures when it comes to dealing with employees with disabilities. Imagine you have an employee who requests an unreasonable accommodation for his/her disability and a jury ultimately agrees that you were not required to provide the requested accommodation. No liability, right? Wrong. The court of appeal recently affirmed a \$2.26 million award in favor of a disabled employee who was correctly denied a request for a job reassignment.

Why? Because the employer (in this case the Automobile Club of Southern California) did not "engage in a good-faith interactive process" with the employee to explore alternative accommodations. It did not matter whether other accommodations were in fact available – the employer never explored alternative solutions with the employee and therefore could not say for certain whether such an accommodation existed.

Under the Americans with Disabilities Act (ADA) and its California counterpart, the Fair Employment and Housing Act (FEHA), an employee

with a disability (as defined by statute) is entitled to a reasonable accommodation that would allow the employee to perform the essential functions of his/her job. The term "reasonable accommodation" may include, depending on the circumstances, a job restructuring, part-time or modified work schedules, an unpaid leave of limited duration, reassignment to a vacant position, or acquiring or modifying equipment or other devices.

California law, unlike federal law, imposes a separate duty on employers to engage in a timely, good-faith interactive process with an employee to determine effective reasonable accommodations. This means that a California employer can be liable simply for failing to engage in the interactive process, whether or not the process would have resulted in an accommodation. And, as demonstrated in the case of the Automobile Club of Southern California, a blatant refusal to respond to an employee's inquiries can lead to an award of punitive damages as well.

In short, an employer should respond to anything sounding remotely like an accommodation request from

a disabled employee, no matter how unreasonable that request might be. The employer should suggest other possible accommodations and encourage the employee to make suggestions. Most importantly, the process should be fully documented.

Unfortunately, being an employer today is too much of a "gotcha" game. With a few simple steps, you can protect your business from making costly mistakes.

Should you need any assistance in evaluating whether an employee is disabled, in responding to an employee's request for an accommodation, or in tackling other human resource challenges, please contact Christine Page in our Employment Law Department.



Christine A. Page is a partner at Gilchrist & Rutter in Santa Monica, Calif. Her practice focuses on business litigation & dispute resolution, emphasizing real estate, employment and securities matters.