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New Jersey Eases Pleading Requirements For Failure To Accommodate Disability Claims

Across the country, Human Resources departments deal with employee disability issues that have the potential to expose employers to liability, and New Jersey is no exception. These issues often revolve around employee requests for accommodations to be made for their disability. A recent New Jersey Supreme Court case clarified a historic ambiguity under New Jersey's Law Against Discrimination ("LAD"), making it easier for employees to bring so-called "failure to accommodate" claims against an employer.

New Jersey's Law Against Discrimination ("LAD")

New Jersey's LAD prohibits harassment and discrimination based on a person's disability, as well as other actual or perceived protected characteristics which include race, religion, national origin, gender, gender identity, and sexual orientation.ⁱ The LAD also requires employers to make reasonable accommodations for employees with disabilities.ⁱⁱ

It is well established that employees bringing claims under the LAD must prove three elements: (1) the employee "qualifies as a an individual with a disability, or [] is perceived as having a disability, as that has been defined by statute'; (2) [] 'is qualified to perform the essential functions of the job, or was performing those essential functions of the job, either with or without reasonable accommodations'; and (3) that the [employer] 'failed to reasonably accommodate [the employee's] disabilities.'"ⁱⁱⁱ Historically, some employee plaintiffs also had to prove a fourth element – that the employee experienced an adverse employment action.^{iv} Adverse employment actions include, but are not limited to, terminations, demotions, or failing to promote an employee. However, several New Jersey courts have elected to not require employees to prove an adverse employment action to succeed on a failure to accommodate claim,^v which created a conflict in how the LAD is applied. The New Jersey Supreme Court recently addressed the conflict in *Richter v. Oakland Board of Education*.

Richter v. Oakland Board Of Education

In *Richter*, plaintiff Mary Richter, a longtime type 1 diabetic, was a career middle school teacher employed by the Oakland Board of Education. Richter's teaching duties included supervising students in the cafeteria as assigned by school administrators.^{vi}

In the 2012-2013 school year, Richter received a lunch duty assignment that, when combined with her class schedule, shifted her personal lunch break to start at 1:05pm two days per week. Believing such a late lunch would cause her blood sugar to fall too low, Richter requested a change to her lunch duty schedule numerous times from the school principal. The principal changed her schedule for the second marking period of the year, but after mistakenly reassigning Richter to the problematic schedule one day a week for the third marking period, and acknowledging his mistake, the principal nonetheless forced Richter to maintain the lunch duty schedule as assigned.^{vii}

“On March 5, 2013, Richter had a seizure...she later filed suit under the LAD against the Board for its failure to reasonably accommodate her disability.”

On March 5, 2013, Richter had a seizure caused by her low blood sugar and passed out, falling to the ground in front of her students. When she fell, she struck her head against a lab table and the floor. Richter experienced serious injuries, including permanent total loss of smell, loss of taste, dental and facial trauma requiring tooth extraction and bone grafts to repair, and decreased life expectancy, among other injuries, many of which were permanent.^{viii}

Richter filed a claim under New Jersey's Workers Compensation Act (“WCA”) against the Board for her work-related injuries and was awarded some damages, however her award was far less than necessary to compensate her for her injuries. Although Richter continued to work as a teacher for the school and never experienced an adverse action, she later filed suit under the LAD against the Board for its failure to reasonably accommodate her disability.^{ix} The Board moved for summary judgment, arguing that under New Jersey law, an adverse employment action is required to successfully plead a claim for failure to reasonably accommodate a disability, and because Richter did not suffer an adverse action, the Court should rule in the Board's favor.

An Adverse Action is Not Required for a Plaintiff To Plead Failure to Accommodate a Disability Under the LAD

Specifically, the Board argued that because Richter returned to work and was not demoted, terminated, or otherwise disciplined, she could not bring a failure to accommodate claim.^x

The LAD requires employers to provide reasonable accommodations to employees with disabilities unless it would “impose an undue hardship on the operation of [the employer’s] business,”^{xi}. The LAD itself does not explicitly require an adverse employment action to trigger an employer’s liability. Instead, over the years New Jersey courts have fashioned the required elements of a failure to accommodate claim. Not all New Jersey courts had agreed on the necessary elements for a disability discrimination claim, resulting in a split between courts dealing with these claims. The New Jersey Supreme Court also had never expressly decided whether an adverse employment action is a required element of a failure to accommodate claim under the LAD.

In *Richter*, the New Jersey Supreme Court resolved the split and rejected the Board’s argument, finding that Richter was not required to demonstrate she suffered an adverse employment action to prove her failure to accommodate claim.^{xii}

The Court reasoned that the LAD promised “to eradicate obstacles in the workplace for persons with disabilities [by making] it possible for [those] people to work.”^{xiii} Plaintiffs therefore should not be forced to wait for an adverse action to occur before making a claim. The goal of an employee’s request is to obtain a reasonable accommodation from their employer so the employee can continue to work. According to the Court, requiring a termination, demotion, or similar adverse action would impede this goal and go against the clear legislative intent expressed in the LAD. As a result, the Court found that the wrongful act that gives rise to liability is the employer’s failure to provide a reasonable accommodation itself, not a subsequent adverse action taken against an employee after the accommodation is denied.^{xiv}

If an adverse employment action was a required element of a reasonable accommodation claim, the Court reasoned, nothing would stop employers from escaping liability on failure to accommodate claims brought by disabled employees so long as they never imposed an adverse action.^{xv} Thus, an adverse employment action cannot be a required element of a failure to accommodate claim. Instead, just “an employer’s inaction, silence, or inadequate response to a reasonable accommodation request is an omission that can give rise to a cause of action” without any further act of the employer.^{xvi}

So what do employers have to do to avoid failure to accommodate claims? Under the LAD and *Richter*, employers have a duty to provide reasonable accommodations, and that includes engaging “in an interactive effort to attempt to reach a reasonable accommodation.”^{xvii} This does not mean that employers must accept whatever accommodation is requested, but employers do need to engage with the employee to, when possible, craft a reasonable accommodation that allows the employee to perform her job functions without causing the employer undue hardship.

Workplace Injuries and Failures to Accommodate: A Distinction Without a Difference

The Court also rejected the Board’s claim that Richter’s claim should fail because of her successful claim under the WCA.^{xviii} The Court harmonized the two laws, and permitted Richter full recovery under the LAD, reduced by her recovery under the WCA.^{xix} Thus, an employee does not lose the protection of the LAD just because she suffers a physical injury in the workplace as a result of the employer’s unlawful discrimination.

Bottom Line Takeaways for Employers

- 1.** In New Jersey, employers have an affirmative obligation to make reasonable accommodations to disabled employees unless the accommodation would cause undue hardship.
- 2.** If they don't, disabled employees can bring failure to accommodate claims, even if they never suffer an adverse employment action.
- 3.** Employee claims will not be barred by any workers' compensation claim they may make prior to filing suit.
- 4.** The best practice for employers is to begin the interactive process immediately upon receiving a request for accommodation to determine and implement reasonable accommodations where warranted.

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Endnotes

- i See N.J. Stat. Ann. § 10:5-3 (West); *Taylor v. Metzger*, 152 N.J. 490, 498 (1998).
- ii See N.J. Admin. Code § 13:13-1.1, 2.5.
- iii *Royster v. New Jersey State Police*, 227 N.J. 482, 500 (2017) (quoting *Victor v. State*, 203 N.J. 383, 410, 421 (2010)).
- iv See *Richter v. Oakland Bd. of Educ.*, 246 N.J. 507, 525 (2021).
- v See *Royster*, 227 N.J. at 500; *Victor*, 203 N.J. at 525.
- vi *Richter*, 246 N.J. at 515-16.
- vii *Id.* at 516-17.
- viii *Id.* at 518.
- ix *Id.* at 518-19.
- x *Id.* at 519.
- xi N.J. Admin. Code § 13:13-2.5(b).
- xii *Richter*, 246 N.J. at 529-30.
- xiii *Id.* at 530.
- xiv *Id.* at 530-31.
- xv *Id.* at 531.
- xvi *Id.*
- xvii *Id.* at 543.
- xviii See *id.* at 540-42.
- xix *Id.* at 544.