

## What is a Reasonable Accommodation under the ADA?

Articles July 6, 2017

The Americans With Disabilities Act (“ADA”) requires that employers provide employee’s with a qualifying disability with a reasonable accommodation, so long as the same does not represent an undue burden on the employer.

The question often facing employers is “what is a reasonable accommodation”? A recent case in the Second Circuit Court of Appeals is instructive.

In that case, a national pharmacy chain decided to start offering immunizations and to make the giving of immunizations a explicit requirement for all of its pharmacists. One long-time pharmacist balked, providing a doctor’s note that he suffered from trypanophobia, which is a fear of needles. The doctor indicated that being around needles would spike his blood pressure to dangerous levels and could cause him to faint.

The pharmacist requested a reasonable accommodation under the ADA. He offered two possible accommodations. One was that the pharmacy send him to “desensitization” therapy before requiring him to give immunizations. The other was that the pharmacy train a nurse to give the immunizations for him. The pharmacy rejected both of those requested accommodations and ultimately fired him when he refused to give immunizations.

A jury initially awarded the pharmacist damages in the amount of \$2.6 million. But the Second Circuit Court of Appeals reversed. As to the first requested accommodation, the therapy, the Court said that employers are not obligated to offer medical treatment as a reasonable accommodation. An employer may have to accommodate therapy an employee is receiving, but they don’t have to provide that therapy. In this case, the pharmacist had asked that the pharmacy provide him with that therapy.

As to the second requested accommodation, that a nurse do the immunizations, the Second Circuit rejected that on the basis that a reasonable accommodation “can never involve the elimination of an essential function.” The Court found that giving immunizations was an essential function of the position.

A caveat to the above. Some courts have held that the second requested accommodation may be a reasonable accommodation, if there are other employee available and capable of doing a specific task (so long as it is not somehow unfair to the other employee who is asked to do that task).

Obviously, care must be taken to consider the circumstances and what the employers obligations are before agreeing to, or rejecting, any requested accommodation under the ADA.

For additional information contact Scott Leah.