

Breakdown of ADA interactive process may equal constructive discharge

A recent federal appeals court decision shows how risky it is to ignore the interactive accommodations process spelled out in the ADA. In *Talley v. Family Dollar Stores of Ohio* (6th Cir., Sept. 11, 2008), the court held that the breakdown of the interactive process can, in and of itself, constitute a constructive discharge of an employee.

In other words, an employee who quits in frustration can argue that she was essentially forced to quit.

Falling down, sitting down

Pearlie Talley began working as a cashier at Family Dollar Stores in January 1996. During nine years of employment, she took several medical leaves. Some were related to a degenerative spine condition that often rendered her unable to stand or sit for long periods of time. Others related to different medical ailments—a torn knee ligament and heart bypass surgery.

On March 24, 2004, Talley slipped on a waxed floor at work, aggravating her spine injury.

Then she claimed one of her supervisors forbade her from using a stool at her cashier station following the slip and fall. Management's explanation: Other employees complained that Talley was receiving favorable treatment.

Within a couple of months, Talley determined that she could not perform her job without being able to sit down while working her cash register. She took a medical leave of absence.

In July 2004, Talley informed another supervisor that she had received medical clearance and was free to return to work effective Aug. 4. According to Talley, that supervisor insisted that Talley provide a work release containing no restrictions on how she could work.

Noted repeatedly

The doctor's note that she provided, however, required that she use a stool. Her supervisor asked her to sign a letter stating that she understood that she would not be able to use a stool at work, and that she would be limited to three five-minute breaks during a six-hour shift.

Talley responded by submitting a different letter explaining that she could not sign because it would prohibit her from using a stool.

When Talley finally returned to work, she almost immediately complained of severe back pain and asked if she could use a stool. Her supervisor refused, and gave her two options: finish the shift without the stool or get another doctor's note stating she needed the stool. She opted for the latter and provided the note the same day.

When the supervisor refused to open the note, Talley left the store and never returned. Family Dollar officially terminated her five months later for job abandonment.

The Court of Appeals found that, because Family Dollar Stores failed to engage Talley in the necessary interactive process to determine an appropriate reasonable accommodation for her disability, she suffered a constructive discharge and therefore could proceed with a disability discrimination lawsuit.

Handling the ADA's interactive accommodations process

Here are some tips to keep in mind about the ADA's interactive process for resolving requests for reasonable accommodations:

- 1. An employee does not have to use any magic words**, such as "reasonable accommodation," when asking for one. One need only let the employer know, verbally or in writing, and in plain English, that a change is needed for medical reasons.
- 2. An employer may ask (but is not required to ask)** whether an employee needs a reasonable accommodation even if the employee has not asked for one.
- 3. After learning of the need for a reasonable accommodation**, the employer and the employee should engage in an informal process to clarify what the employee needs. The employer may ask the employee relevant questions that will enable it to make an informed decision about the request, including what type of reasonable accommodation is needed.
- 4. There are no hard and fast rules about this interactive process.** In many cases, the disability and the type of accommodation required will be obvious, with little or no need for any discussion. In other situations, identifying an effective accommodation may require the employer to ask questions concerning the nature of the disability and the individual's functional limitations.
- 5. When the disability or the need for accommodation** is not obvious, the employer may ask the individual for reasonable documentation about the disability.
- 6. The employer may choose among several possible reasonable accommodations**, as long as the chosen accommodation is effective. Thus, as part of the interactive process, the employer may offer alternative suggestions for reasonable accommodations and discuss their effectiveness in removing workplace barriers.
- 7. The employer should respond as quickly as possible** to a request for reasonable accommodation, to engage in an interactive process and to provide the decided-upon reasonable accommodation. As was the case in *Talley*, an unreasonable delay can be construed as an ADA violation by the employer.