

LABOR AND EMPLOYMENT

ALERT

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NJ Supreme Court: Workers' Compensation Bar And Absence Of Adverse Employment Action Not Fatal To Employee's Reasonable Accommodation Claim Under New Jersey's Law Against Discrimination

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On June 15, 2021, the New Jersey Supreme Court in *Richter v. Oakland Board of Education* (A-23-19) (083273) held that an employee alleging her employer failed to reasonably accommodate her disability under New Jersey's Law Against Discrimination (LAD) did not have to make an initial showing of an adverse employment action – such as a demotion or termination – for her claim to proceed to trial. The Court also held that an employee's reasonable accommodation claim was not barred by the "exclusive remedy provision" of the Workers' Compensation Act (WCA), where the employee had recovered workers' compensation benefits.

This decision may seem surprising to employers, but was expected by many in the legal community. The *Richter* decision underscores the importance for employers to create and implement a thorough and consistent reasonable accommodation process to avoid liability under New Jersey law.

ANALYSIS OF THE CASE

In *Richter*, the employee/plaintiff, a teacher, had a disability that ultimately caused her to black out and fall in a classroom, resulting in serious and permanent injuries. The plaintiff filed an action against her employer, alleging that the employer failed to accommodate her disability prior to her seizure – despite being asked to do so by the plaintiff. Specifically, the plaintiff asked her employer to schedule her lunch break 90 minutes earlier so that she could maintain proper blood sugar levels. The employer did not accommodate her for the first marking period of the school

year, adjusted her schedule for the second marking period, but did not adjust her schedule for the third marking period. Just before her scheduled lunch break, the plaintiff suffered a seizure in her classroom, causing significant injuries.

The plaintiff filed a workers' compensation claim for the work-related injuries and was awarded the cost of her medical bills and disability benefits. She later filed an action under the LAD, alleging that her employer failed to accommodate her disability, resulting in her injuries. Her employer moved to dismiss the accommodation case on separate motions, asserting that: (1) the plaintiff failed to establish a prima facie failure to accommodate claim under the LAD because she suffered no adverse employment action; and (2) the plaintiff's bodily injury claim was barred by the exclusive remedy provision of the WCA. Both issues reached the New Jersey Supreme Court on appeal, which rejected the employer's argument on both issues and ordered the matter to proceed to trial.

Addressing the failure to accommodate claim, the Court reasoned that an adverse employment action is not a required element as it is with other claims under the LAD, since the adverse action element is satisfied in full by the employer's failure to perform its duty to reasonably accommodate. Rejecting the WCA exclusive remedy argument, the Court found that the WCA and the LAD statutes can function cumulatively and complementarily, and can operate to prevent double recovery.

TAKEAWAYS

The New Jersey Supreme Court in *Richter* makes clear that employers who fail to reasonably accommodate an employee are potentially subject to damages under the LAD – regardless of whether such failure also results in a separate adverse action by the employer. The decision not to reasonably accommodate itself is sufficient to warrant liability under the LAD. The Court also makes clear that an employee’s recovery for physical damages under the WCA may offset, but cannot bar an action under the LAD for damages that the employee is awarded under the WCA.

The *Richter* decision should serve as a reminder to employers to draft and implement accommodation policies and processes, including appropriate training for managers, which comport with legal requirements and considerations under New Jersey law. This includes, but is not limited to:

- Determining whether the person is covered under state (and federal) disability laws. Applicants may be covered, as well as employees misclassified as independent contractors.
- Implementing a consistent, repeatable procedure for handling the “interactive process” that is compliant with the law.
- Establishing an independent review process to determine whether a reasonable accommodation is possible, and what the accommodation should be.

The *Richter* decision is also a reminder that labor and employment law is in constant flux, and employers may want to consult with legal counsel as these issues arise. ◆

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