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Eleventh Circuit Holds that Employees Must Show an Adverse Employment Action to Establish a Failure to Accommodate Under the ADA

Client Bulletins

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On May 24, 2023, the Eleventh Circuit ruled that a failure to accommodate claim under the American with Disabilities Act (“ADA”) is only actionable if the employee establishes that the failure to accommodate negatively impacted the employee’s hiring, advancement, discharge, compensation, or other terms, conditions, and privileges of employment, potentially creating a circuit split on this issue.

In *Beasley v. O’Reilly Auto Parts*, Beasley, a deaf man who worked for O’Reilly as an in-bound materials handler, claimed that O’Reilly discriminated against him in violation of the ADA for failing to provide him with the reasonable accommodations he requested. Specifically, Beasley was denied a sign language interpreter for various meetings, trainings, disciplinary proceedings, and a company picnic. Beasley also did not receive text message summaries of nightly pre-shift meetings that he requested for his disability.

The U.S. District Court for the Southern District of Alabama granted O’Reilly’s motion for summary judgment, finding that Beasley did not establish that he suffered an adverse employment action as a result of O’Reilly’s failure to accommodate. The district court instructed that, in order to succeed on a failure to accommodate claim, an employee must show that the employer’s failure to accommodate caused an adverse employment action.

While the Eleventh Circuit agreed with the legal standard for a failure to accommodate claim articulated by the district court, the Eleventh Circuit ultimately reversed the decision, determining that a genuine issue of material fact exists as to whether adverse employment decisions resulted from O’Reilly’s failure to accommodate Beasley’s requests. The Eleventh Circuit remanded Beasley’s failure to accommodate claim back to the district court for further proceedings.

In light of the *Beasley* decision, an employee must not only establish that the employer failed to reasonably accommodate his/her disability, but also that such failure to reasonably accommodate has negatively impacted the employee’s hiring, advancement, discharge, compensation, or other terms, conditions, and privileges of employment. Essentially, the Eleventh Circuit requires an employee to show more than just a refusal by his/her employer to implement the requested accommodations in order to prevail under the ADA.

The *Beasley* decision departs from the predominant view of other federal circuits, which either state or strongly suggest that an adverse employment action is not a requirement for a failure to accommodate claim. For example, *Beasley* directly conflicts with the Tenth Circuit’s employee-friendly analysis of a failure to accommodate claim under the ADA. On October 28, 2020, the Tenth Circuit ruled in *Exby-Stolley v. Board of County Commissioners* that an employee was held to an unfair

standard when a federal judge in Colorado required her to establish that her employer's failure to accommodate also resulted in a separate adverse employment action. The Tenth Circuit held that an adverse employment action is not a requirement for a failure to accommodate claim under the ADA.

In reaching this decision, Chief Judge Jerome A. Holmes noted that the term "adverse employment action" does not appear in the text of the ADA's accommodation provisions. Chief Judge Holmes further noted that requiring an adverse employment action to prevail on a failure to accommodate claim conflicts with the ADA's broad remedial purposes.

Although the U.S. Supreme Court previously declined to review the Exby-Stolley decision, Beasley now creates a split between the Tenth Circuit and the Eleventh Circuit that may lead SCOTUS to review the issue in the future. Regardless, at this time, the Beasley decision imposes a heavier burden on employees and will make it more difficult for employees to recover for failure to accommodate claims under the ADA.

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