Massachusetts Employer Forced to Pay $24 Million for Failing to Accommodate an Executive's Anxiety

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Mental health issues in the workplace are at an all-time high. And with those issues come a slew of accommodation requests ranging from continued work from home to removal of stressful job duties to not appearing on camera during video calls. While the ADA accommodation process is exploited by unscrupulous employees for a range of health conditions, getting a health care provider to certify mental health accommodations are needed may be easier than other conditions given no physical symptoms need to be presented. In fact, often all an employee has to do is to have a few chats with an online therapist.

The risks associated with mental health disabilities are illustrated by the recent decision of a Massachusetts jury awarding a local executive $24 million based upon what it perceived as the failure of the company to reasonably accommodate the executive's anxiety, even though the anxiety severely impacted the executive's ability to do her job. The case is *Lisa Menninger v. PPD Development L.P.,* and it is a shocking reminder that employers need to take mental health accommodation requests extremely seriously or they may be facing the anxiety of paying a $24 million jury verdict before they know it.

Background

The Americans with Disabilities Act and related state law (collectively, the "ADA") requires employers to provide reasonable accommodations to an otherwise qualified employee in order that the employee be able to perform the essential functions of their job, unless providing such accommodations would impose an undue hardship on the company. An essential function is a "fundamental job duty" and does not include marginal tasks. Identifying essential functions is important because an employer never has to remove such functions as an accommodation. In other words, unless an accommodation results in the essential functions being performed by the employee, it is not reasonable. In determining if a function is essential, courts consider written job descriptions, the work experience of past incumbents, time spent on each task and the current work experience of incumbents in similar jobs. In attempting to arrive at an accommodation, the company and employee are each required to engage in an interactive back and forth process in order to attempt to arrive at a mutually agreed upon reasonable accommodation. If a reasonable accommodation exists that would enable the employee to perform the essential functions of their job, the employer is required to provide the accommodation (or some preferably but equally effective accommodation) unless it can show that doing so would create an undue hardship.

Facts

Plaintiff Lisa Menninger (Lisa), hired in 2015, was an executive at a lab services company. Lisa's role was to provides operational leadership to the company's laboratory services. In 2017, Lisa was told that her role was going to change and involve increased client visits, social interactions, and presentations. This triggered Lisa's anxiety disorder, and she submitted a doctor's note to the company stating that the changes would make it "substantially more difficult, if not impossible, for Lisa to perform her job."

On its face, at least at this point, it would appear that no accommodation would be reasonable as Lisa's own doctor was stating that she could simply not do the job. Not so fast, said the court. Rather, the question was whether the tasks at issue were "essential functions" that must be done, or merely "marginal tasks" which do need to be accommodated (i.e., not necessarily performed the Lisa).

By all accounts, the parties went above and beyond the call of duty in terms of engaging in the interactive process. In response to the doctor's note, the company actually broke down the job duties into five different categories in order to allow the doctor to address how and to what extent Lisa could perform each task. The five

categories were: (1) Senior leadership team presentations, Town Hall meetings, and meetings with the Chief Operating Officer and Executive Vice President (bi-weekly, monthly, and/or quarterly) [up to an audience of 500 people], (2) client bid defenses, issue resolution calls, meetings in-person (at client site) or via phone (once a month at minimum per client) [up to an audience of 50 people], (3) technical sales presentations (internal and external) (monthly, quarterly, and as-needed) [up to an audience of 100 people], (4) meals and social interactions while at client visits (expected 60-80% of the time to build business relationships), and (5) travel (up to 30%).

Lisa's doctor then suggested specific accommodations with respect to each job duty, which bear repeating here:

- For internal team presentations and meetings, Lisa will be "responsible for all slides/handouts/ presentation material with necessary information but will require a reader to present to the group or can pre-record the audio / video and it can be played at the meeting available for questions via email after the meeting."
- For client bid defenses, issue resolution calls, and meetings at Highland Heights, Lisa will be "available via email/ text/ remote video conferencing for a representative of the client, 1–2-person audience maximum. If it is a site meeting, surrogate or reader with all necessary information / real time access to [Lisa] will be available."
- For client site meetings, Lisa "would like a surrogate to attend, but will be responsible for all problem solving/ ideas for resolution if emailed/ communicated to [her] a few days before anticipated visit."
- For internal and external technical sales presentations, Lisa requested to be "excused from sales presentations but again will provide any necessary data information for the reader/ surrogate to have at their disposal."
- For meals and social interactions while at client visits, Lisa requested a "surrogate, as this is not her strength/ skill set and her disability will flare with significant impairment. She is able to build business relationship in a more 'behind the scenes' fashion and would like [to] brainstorm other potential avenues where she can add value as she does understand this is an important part of the business."
- For travel, Lisa requested to travel to the Belgium laboratory versus its laboratories in the United States.

The company reviewed and considered this information, concluding that while it would provide accommodations for two of the five categories by reducing travel expectations from 30% to 15% and by allowing Lisa to have a reader present for internal company meetings, it could not grant the proposed accommodations for categories 2, 3, and 4 because they involved functions central to Lisa's role and the company's needs. On its face, the company conclusions made sense – Lisa was required to perform – with accommodation – all essential job function, and the particular accommodation requests would have resulted in Lisa not doing so.

A few months later, Lisa informed the company that her doctor advised her to take medical leave. She remained on leave for the next eight months (six of which were fully paid), at which point the company terminated her employment.

Lisa sued the company for disability discrimination, claim among other things that the company had failed to accommodate her disability by providing the reasonable accommodations she requested. The company moved for summary judgment, arguing that the facts of the case were not in dispute and that, as a matter of law, Lisa's case had to be dismissed because her own doctor stated that she could not do the job and the accommodations requested were, by definition, not reasonable.

The motion was denied. The court said that while the company did establish that at least some of the meetings, public speaking, or client engagements were essential functions, a question still remained regarding the extent of those activities qualifying as essential. The court noted that Lisa could perform some of those tasks and "this is not the case where the record establishes that [she] could not perform this function at all." Thus, whether the full extent of the functions as described by the company all qualified as essential presented a question for a jury.

The case was ultimately tried before a jury which found in favor of Lisa. Since the rationale of a jury is not written nor published, the exact basis of the jury's decision is not crystal clear. However, based upon the published record, it is likely that the jury came to the conclusion that it was not necessary for Lisa to perform the allegedly essentially functions to the extent suggested by the company nor were all of those functions truly essentially.

This outcome is certainly concerning for any business. It is difficult to envision how Lisa's accommodation requests are reasonable. For example, did a jury actually agree that Lisa did not need to attend on-site meetings

but “could engage in problem solving/ ideas for resolution if emailed/ communicated to before the anticipated visit?” Likewise, did the jury find that it was reasonable that Lisa could be excused from internal and external technical sales presentations but instead to provide any necessary information for her surrogate?” Those types of accommodations seem counterintuitive as it is a basic tenant of the ADA that having a surrogate or different employee perform any essential function is not an accommodation (i.e., if you are having another person do your job you are, by definition, not doing the job).

The Result

Liability was found despite the efforts of the company to provide an accommodation. While the facts that came out at trial at not all known, it certainly appears from various comments and the published summary judgment decision that the company (any Lisa) engage in a very detailed and concerted effort to satisfy the required interactive process in order to at least attempt to arrive at some mutually feasible accommodation. Said differently, the company lost after appearing to do more than what might be done by others in similar situations. But apparently the company did not do enough – the jury awarded Lisa $24 million, consisting of $1.565 million in back pay (lost wages from the time of termination until the trial), $5.465 million in front pay (an estimate of future lost wages until it could be expected that Lisa would find comparable employment), $5 million for past emotional distress, $2 million for future emotional distress, and $10 million in punitive damages.

Practical Pointers for Dealing with Mental Health Accommodations

Businesses are well advised to take the time to prepare for mental health accommodations to avoid the result suffered by *Menninger*. Employers should consider the following steps:

- Mental health accommodation requests can be hard to spot. While the one in *Menninger* could not be missed, managers often do not spot an employee’s reference to being “depressed” or “anxious” as potentially triggering the ADA because we use those words to also describe normal mental states versus disabilities.
- Be diligent in undergoing the interactive process even when the accommodation seems a bit crazy and even when you are dealing with a high-level, highly paid leader. *Menninger* is a great illustration of how much effort the interactive process takes.
- Consider offering a voluntarily severance package to entice an employee with unreasonable requests to resign.
- Never terminate an employee on a medical leave prior to at least a year expiring. While it is impossible to know the exact affect the employer’s decision to terminate Lisa after only 8 months of leave, a jury might have been a little less sympathetic if she remained on leave for another 4 months and still had not been able to improve her mental health.
- Always consult with experienced legal counsel when denying an accommodation request, particularly a mental health accommodation request, and seriously consider the risks your counsel advises. An employee claiming mental health issues may easily be able to rack up damages by stating the anxiety and stress of the interview process prevented them from obtaining a new job.

Partridge Snow & Hahn partners Michael A. Gamboli and Alicia J. Samolis are ready to answer any questions employers may have about this issue. For additional information and resources visit the firm’s Employment & Labor Group at Partridge Snow & Hahn.

https://www.psh.com/massachusetts-employer-forced-to-pay-24-million-for-failing-to-accommodate-an-executives-anxiety/