

EEOC's Notice Pleading Survives Motion to Dismiss in Failure to Accommodate and Wrongful Termination Suit

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A North Carolina district court recently declined to dismiss a failure to accommodate and wrongful termination action brought by the EEOC on behalf of a patient accounts representative in *EEOC v. Advance Home Care, Inc.* ("Advance"). The plaintiff was discharged after she could not return to work without restrictions following exhaustion of her FMLA leave. The court held that the EEOC's complaint adequately alleged that the employee was qualified for her position and linked Advance Home Care's alleged failure to accommodate to the discharge.

The plaintiff, who suffers from chronic bronchitis and COPD, was out on FMLA during the month of August 2015. Upon her return, she requested an accommodation to telecommute on either a full-time or part-time basis on the account of her disability. The plaintiff allegedly informed Advance that working from home would allow her to work without exposure to aggravating scents and odors present in the office and would allow her to work without taking inbound calls, which would result in her spending less time continuously talking.

Advance management allegedly told the plaintiff that it would get back to her regarding her request to telecommute, but never did, despite at least three requests from the plaintiff.

In November, the plaintiff was hospitalized and once again went on FMLA leave. During her absence, she received a satisfactory performance review. However, on more than one occasion, Advance management allegedly informed the plaintiff that her employment would be terminated if she did not return to work without restrictions after her FMLA leave ended. When she exhausted her FMLA leave and could not return to work free from restrictions, her employment was terminated.

The plaintiff was primarily responsible for managing cases for patients who required home health services. The plaintiff alleges that she spent part of her day on telephone calls arranging home health services, duties that she asserted she could perform remotely from her home in order to remove herself from the potential respiratory irritants in the office, and reduce the amount of time she would spend continuously talking.

In finding that the plaintiff had sufficiently plead a failure to accommodate, the Court noted that the EEOC did not have the burden of stating the essential functions of the plaintiff's job with particularity to survive the pleading stage nor did the EEOC need to include facts to rebut Advance's potential undue hardship defense. Instead, the court held that by alleging that the plaintiff spent part of her workday on the telephone and giving sufficient detail about the requested accommodation, the EEOC had provided enough information. The court could infer that the plaintiff could have performed her job duties with the requested accommodation.

As to the wrongful termination claim, the court rejected Advance's argument that the plaintiff was not fulfilling the company's legitimate expectations because she was not working at the time of her discharge and had stated that she was unable to return to work after exhausting her leave. Again, the court sided with the EEOC, accepting its argument that the plaintiff's supervisor repeatedly informed her that her employment would be terminated upon the expiration of her FMLA leave if she could not return to work without restrictions. The court found that the EEOC had sufficiently plead wrongful termination in alleging that the plaintiff received a satisfactory performance

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review during her leave, requested an accommodation on several occasions with no meaningful response from Advance, and was discharged upon the expiration of her FMLA leave under circumstances giving rise to a reasonable inference that it was because of her disability.

This case demonstrates the importance of employers engaging in an interactive dialog with employees regarding requested accommodations rather than simply stating they must be able to perform their duties without restriction upon their return from a leave of absence.

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