

Formal Medical Diagnosis Not Required at Time of Wisconsin Fair Employment Act Accommodation Request, State Court Rules

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Jesse R. Dill

Milwaukee

Author

In a decision providing guidance to employers facing requests for health-related accommodations, the Wisconsin Court of Appeals held in *Wingra Redi-Mix Inc. v. Labor and Industry Review Commission* that a formal diagnosis at the time of an employee's request for accommodation is not required to raise the protections of the Wisconsin Fair Employment Act (WFEA). The court reasoned that the employee provided sufficient information when he described his physical symptoms to inform the employer that he likely suffered from a disability and requested an accommodation for it.

Quick Hits

A formal diagnosis at the time of an employee's request for accommodation is not required to raise Wisconsin Fair Employment Act protections, the Wisconsin Court of Appeals ruled.

A cement truck driver suffering severe pain requested a truck that was easier to operate, but the request was denied due to a company policy that prohibited truck reassignments.

The Wisconsin Court of Appeals held that an employer may not ignore or deny an employee's accommodation request simply because it is not submitted with a diagnosis of the health condition for which the employee requests accommodation.

Background

In *Wingra Redi-Mix Inc.*, the employee worked as a truck driver who delivered concrete to construction sites. The company's older truck models had cable-operated gas pedals, which lacked shock absorbers. The employee experienced daily pain while operating this equipment. Specifically, the employee complained to his employer of severe back and leg pain.

The employee first spoke with management about the possibility of filing a worker's compensation claim related to the pain he experienced. In response, the company opined on the likelihood of the employee's success with such claim. When it communicated with the employee about the possibility of his filing a worker's compensation claim, it did not seek medical evidence regarding the condition he raised.



Katlyn Q. McGarry

Milwaukee

Author

The employee then requested that the company assign him one of its newer model trucks that was easier to operate. When managers communicated internally about the employee's reassignment request, they discussed that the employee had made the request due to the physical pain he experienced with his current equipment. The company ultimately denied his request because its policy prohibited employees from transferring trucks. The company claimed it had no reason to deviate from its stated policy. In response, the employee emailed the company and recalled that he had previously described to management his "extreme soreness" caused by operating his truck, which caused his "body pains." Further, the employee wrote that he was not able to see a doctor because he lacked health insurance. Notwithstanding these emails, the company confirmed that it declined to transfer him to a different vehicle. The employee's employment ended after the company refused to accommodate his request.

The Court's Analysis

In concluding the employer violated the Wisconsin Fair Employment Act (WFEA) and engaged in disability discrimination, the Wisconsin Court of Appeals reasoned that the employer had received sufficient information to know that the employee likely met the definition of an individual with a disability. Therefore, the company violated the WFEA when it denied his requests for a newer model truck to accommodate his health condition. Although the employee did not obtain a medical diagnosis until after the termination of his employment, the court reasoned that such assessment was not required for the WFEA to apply and raise the reasonable accommodation requirement. The court clarified that an employer may seek additional medical information from an employee to substantiate a health condition and determine if it meets the WFEA's definition of a disability, but the company did not do so here.

Bottom Line

The *Wingra Redi-Mix Inc.* court rejected the employer's argument that an employee must obtain a medical diagnosis at the time the employee requests an accommodation for the WFEA to apply. When an employer receives a description from an employee of physical or mental health symptoms, it may consider requesting additional information to substantiate that the health condition meets the definition of a disability under the WFEA. Ignoring an employee's information and request for a change to the work environment because the request is unaccompanied by a diagnosis of the health condition or a description stating that the employee is actively seeking treatment by a healthcare professional may risk violation of the WFEA's disability accommodation requirements.

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