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New York Employers Must Engage in "Interactive Process" To Prevail On Summary Judgment

By Robert S. Whitman and Courtney S. Stieber

The New York Court of Appeals held yesterday that an employer is generally precluded from obtaining summary judgment on a disability claim under the New York State and City Human Rights Laws unless it can show that it engaged in good faith in the "interactive process" regarding the feasibility of the employee's requested accommodation at the time of the employee's request.

In *William Jacobsen v. New York City Health and Hospitals Corp.,* the Plaintiff's job required that he be present at outdoor construction sites. Because of an asbestos-related lung condition, he requested that he be transferred to a prior position, which required much less time at the sites, and that he be provided a respiratory mask for use during on-site visits. While the employer denied the request based on the Plaintiff's medical documentation, the record did not show whether the employer actively considered these requests before denying them or whether they were feasible accommodations at the time. Plaintiff's condition worsened, and his employment was terminated in March 2007 after he could no longer perform the essential functions of his job.

The trial court granted summary judgment to the employer, and the Appellate Division affirmed. The Court of Appeals held that summary judgment on the Plaintiff's New York State and City Human Rights Law claims was improper because a question of fact existed as to whether the employer engaged in the good-faith interactive process regarding the requested accommodations at the time the Plaintiff made his request. The Court rejected the employer's argument that the Plaintiff later became unable to perform his essential functions, holding that his subsequent incapacity did not relieve it of the obligation to engage in the interactive process when the request was made.

In short, the Court held that an "employer normally cannot obtain summary judgment on a State HRL [or City HRL] claim unless the record demonstrates that there is no triable issue of fact as to whether the employer duly considered the requested accommodation." While the Court cautiously noted that its decision should not be interpreted too broadly -- stating that the failure to engage in the interactive process is not dispositive and that the employee still bears the burden of proving a reasonable accommodation exists -- the *Jacobsen* decision makes clear that, in order to escape trial and prevail on summary judgment, an employer generally must present evidence that it engaged in the interactive process with respect to

each requested accommodation.

Robert S. Whitman is a partner in Seyfarth's New York office and *Courtney S. Stieber* is an associate in the firm's New York office. If you would like further information, please contact your Seyfarth Shaw LLP attorney, Robert S. Whitman at *rwhitman@seyfarth.com* or Courtney S. Stieber at *cstieber@seyfarth.com*.