

Light Duty And The Wisconsin Fair Employment Act: The Good Things You Do Today... May Become The Difficult Things You Must Do Tomorrow.

Existence of A Disability

ADA: *Toyota Motor Manufacturing v. Williams* (2002) – employee with permanent restrictions due to bilateral carpal tunnel syndrome and tendonitis, who was only able to rotate through two of four required job tasks because of restrictions, found not to have a “disability” under ADA; inability to perform certain tasks required of job does not constitute a “substantial limitation” of major life activity of “performing manual tasks”; relevant question is whether impairment prevents or severely restricts individual from performing tasks that are of central importance to *most people's* daily lives, not whether the individual is unable to perform the tasks associated with her specific job.

Mays v. Principi (7th Cir. 2002) - court criticized employer for failing to raise defense that a back injury resulting in permanent 10-pound lifting restriction did not constitute a disability:

“We doubt whether lifting more than ten pounds is a [major life activity]... It is not as if the plaintiff were missing an arm... The number of Americans restricted by back problems is legion. They are not disabled... we have thought it prudent to register our doubts lest it be assumed by our silence to endorse the proposition that a back injury that merely limits a person’s ability to lift heavy objects creates a disability within the meaning of federal disability law.”

WFEA: *Hutchinson Technology, Inc. v. LIRC* (Wis. Ct. App. 2003) – court rejected employer’s reliance on federal case law to define WFEA requirement that disability “limits capacity to work” to mean employee must be limited in her capacity to work in general, rather than her specific job. Under Wisconsin law, this requirement applies to the particular job in question, not to the ability to work in general.

Inability to Perform Essential Function of Job

ADA: *Matthews v. Commonwealth Edison Company* (7th Cir. 1997) - “We have tried to make clear in our previous cases, and here repeat, that a fired (demoted, etc.) worker who cannot do the job, even with a reasonable accommodation, has no claim under the ADA. It is irrelevant that the lack of qualification is due entirely to a disability.”

WFEA: *Crystal Lake Cheese Factory v. LIRC* (Wis. 2003) - a disability is not “reasonably related to an individual's ability to adequately undertake the job-related responsibilities of her employment” if she can still **adequately** perform her job, with accommodation; if so, burden shifts to employer to demonstrate that the proposed accommodation is unreasonable and/or would create a hardship.

Converting A Temporary Assignment Into A Permanent Position

ADA: *Watson v. Lithonia Lighting & National Service Industries, Inc.* (7th Cir. 2002) - employer did not fail to reasonably accommodate an employee with upper extremity restrictions by refusing to permanently assign her to certain tasks in required job rotation, even though it did so for employees on light duty:

“The ADA does not require an employer that sets aside a pool of positions for recovering employees to make those positions available indefinitely to an employee whose recovery has run its course without restoring her to her original healthy state.”

Vande Zande v. Wis. Dept. of Admin. (7th Cir. 1995) - “If the employer... bends over backwards to accommodate a disabled worker – goes further than the law requires... it must not be punished for its generosity by being deemed to have conceded the reasonableness of so far-reaching an accommodation.”

WFEA: *Hutchinson Technology, Inc. v. LIRC* – upheld LIRC finding that employer violated WFEA when it refused to convert temporary eight-hour light duty assignment to permanent eight-hour shift, when position required twelve-hour shift. LIRC rejected employer’s contention that it should not be punished for allowing a temporary accommodation:

*“[W]hile the commission certainly does not wish to discourage employers from offering temporary accommodations, **the fact that an employer has made a temporary accommodation does not shield it from liability when its willingness to provide a reasonable accommodation ceases.** Here, the employer’s temporary accommodation was successful – for an extended period of time, and there is no evidence to establish that the company would have suffered a hardship had it continued.”*

Exemption from Established Job Rotation

ADA: *Watson v. Lithonia Lighting & National Service Industries, Inc.* (7th Cir. 2002) - employer did not fail to reasonably accommodate an employee with upper extremity restrictions by refusing to permanently assign her to certain tasks in required job rotation, even though it did so for employees on light duty.

Malabarba v. Chicago Tribune Co. (7th Cir. 1998): “The question [is] whether the company’s rationale for rotating employees among the various duties attendant to the [position] is a legitimate one.”

WFEA: *Hutchinson Technology, Inc. v. LIRC* - employer violated WFEA when it refused to allow employee with disability to work permanent eight-hour shift, where employee worked in position that required twelve-hour shifts.

Employer failed to demonstrate, in the specific context of its production process, why it would be unreasonable to *limit the employee to the performance of only one of four functions that employees in her position are required to rotate through.*

Assigning Heavy Duties to Other Employees

ADA: *Peters v. City of Mauston* (7th Cir. 2002) - having someone else perform heavy lifting is not a reasonable accommodation, because it requires another person to perform an essential function of a disabled employee's job.

WFEA: *Crystal Lake Cheese Factory v. LIRC* - employer violated WFEA when it refused to reasonably accommodate quadriplegic employee confined to a wheelchair by modifying her job duties to exempt her from performing the heaviest physical tasks and assigning them to other employees.

"A reasonable accommodation is not limited to that which would allow the employee to perform adequately *all* of his or her job duties. A *change in job duties* may be a reasonable accommodation in a given circumstance."

Exemption From Mandatory Overtime

ADA: *Davis v. Florida Power & Light Co.* (11th Cir. 2000) - duty to accommodate does not require an employer to exempt an employee from a mandatory overtime requirement or to disregard the overtime provisions of a collective bargaining agreement, where mandatory overtime is an essential function of the job. (EEOC argued that overtime could never be an essential function of a job).

Zaborowski v. Sealright Co. (N.D. N.Y. 2002) - Where the demands of the job require working overtime on a regular basis, overtime is an essential function of the job; employer is not required to eliminate an essential job function to accommodate an employee's disability.

WFEA: *Hutchinson Technology, Inc. v. LIRC* - employer discriminated against employee on the basis of her disability when it refused to accommodate her back condition by allowing her to work a permanent eight-hour shift instead of her required 12-hour shift.