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Winter Can Bring ADA Claims Along with the Blues

By Gregory M. Wesley, Esq.

Winter is coming, and with it, the "winter blues." But in "light" of a recent opinion from the Seventh Circuit Court of Appeals, employers need to be aware that in extreme cases, they may need to accommodate employees under the Americans with Disabilities Act (ADA). The term for the condition is seasonal affective disorder, or seasonal affect disorder.

According to the U.S. National Library of Medicine, "some people experience a serious mood change when the seasons change. They may sleep too much, have little energy, and crave sweets and starchy foods. They may also feel depressed. Though symptoms can be severe, they usually clear up."

In this recent Seventh Circuit decision, *Ekstrand v. School Dist. of Somerset, --- F.3d ----, 2009 WL 3172690 (7th Cir. October 6, 2009)*, Renae Ekstrand, the employee, was a public elementary schoolteacher. When she transferred from teaching kindergarten to first-grade for the 2005-06 school year, she was reassigned to a room that lacked exterior windows.

Ekstrand told the principal she had seasonal affect disorder and would have difficulty in a room with only artificial light and repeatedly requested an alternate room with natural light. Two such rooms were available, but the district did not reassign her,

attempting to deal with the problem in various other ways.

In October 2005, Ekstrand went on medical leave. On November 28th, her doctor informed the school that natural light was the only way to accommodate her seasonal affect disorder. Still, the district refused to reassign her to a different room, and Ekstrand never taught in the district again.

Ekstrand sued the district under the ADA, but the district court granted summary in favor of the district. But Ekstrand appealed, and the Seventh Circuit reversed.

The court agreed with the school district that, prior to the November 28th notification from the doctor, it had acted reasonably in trying to accommodate her condition. The court held, "an employer may not be obligated to provide a specifically requested modest accommodation unless the employer is made aware of its medical necessity to the employee."

But once the district was notified on November 28 that natural light was a medical necessity, it had a duty to provide it, unless doing so would impose an "undue hardship."

Finding that two alternative classrooms were available - one was empty, and another teacher was willing to switch rooms with Ekstrand - the court held that the costs involved in making an accommodation were sufficiently modest that a jury could find them required under the ADA and reversed. The court reasoned, "We think these admittedly nonzero costs are modest and that Ekstrand presented sufficient evidence for a jury to find them required under the ADA's reasonableness standard beginning November 28, 2005, when the school district knew that a room with natural light was necessary to accommodate her."

Two aspects of the opinion are particularly noteworthy. First, this is the first published federal court of appeals opinion to address seasonal affective disorder under the ADA. The only other court of appeals opinion is an unpublished opinion from the Second Circuit in New York, *MacGovern v. Hamilton Sunstrand Corp.*, 2002 C02 600 (Nov. 15, 2002), affirming the district court's holding that the plaintiff failed to inform the employer that he considered its accommodation inadequate. The second noteworthy aspect is that the only issue is accommodation. The opinion addresses no other issues that are frequent issues in ADA litigation, such as whether or not the employee is in fact both disabled, but still qualified.

A concurring opinion by Judge Terence T. Evans addresses whether Ekstrand was a qualified individual. Noting that the case involves not just an employee and employer, as in a typical ADA case, but first-grade students, Evans opined, "I can't imagine that many parents would be too pleased to have their first-graders in a classroom taught by a teacher who, to quote the court's opinion, suffered from 'fatigue, anxiety, hypervigilance, tearfulness, racing thoughts, and trouble organizing tasks' plus 'inability to concentrate ... retrieve words, make decisions ... focus on the needs of her students ... hypersomnia ... panic attacks, uncontrollable crying, inability to eat, and thoughts of suicide.'"

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Evans suggested that the district court take "a close look on remand" whether Ekstrand was in fact a "qualified individual" in the fall of 2005, but the lead opinion never even addressed the issue.

According to one study performed in Alaska, 8.9 percent of that state's population suffers from seasonal affective disorder. Assuming it is a genuine disability within the meaning of the ADA, it is odd that there is so little litigation involving the condition. Nevertheless, this case demonstrates that employers do need to treat claims of seasonal affect disorder as seriously as any other claim of disabling depression.

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