

CLIENT NEWS BRIEF

Court Affirms That Parties to an Interactive Process Must Engage “In Good Faith”

EEOC v. Kohl's Dep't Stores, Inc. (1st Cir., Dec. 19, 2014) __F.3d__ 2014 Lexis 24043 serves as an instructive guide to employers regarding their role in the interactive process required under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12112. In this case, the court reiterated the requirement that *both* the employer and the employee are required to participate in the interactive process in good faith, and an *employee's* failure to participate in good faith may serve as a defense to any later claim that the employer failed to provide the employee with reasonable accommodations.

In *Kohl's*, a lawsuit was filed against Kohl's Department Stores, Inc. (Kohl's) on behalf of Pamela Manning, a former employee of Kohl's with Type 1 Diabetes. Ms. Manning quit her job after Kohl's did not assign her specific shifts that she had requested as an accommodation for her diabetes. The EEOC filed a lawsuit against Kohl's on Ms. Manning's behalf alleging disability discrimination and constructive discharge. The trial court dismissed the case and the appellate court upheld that decision.

On the discrimination claim, the court of appeal focused on what it means for parties to engage in a good faith interactive process under the ADA. An interactive process consists of discussions between the employer and employee regarding the employee's work restrictions and potential accommodations that the employer may reasonably provide to the employee. The court recognized that the ADA requires both the employer and the employee to engage in good faith in the interactive process.

The court found that Kohl's had met its good faith obligations because Kohl's considered Ms. Manning's requested accommodation, but was unable to grant it because Kohl's internal rules governing full-time sales associates required that they be available to work nights. The court found that Kohl's considered and attempted to discuss with Ms. Manning alternatives to her proposed accommodation, including eliminating Ms. Manning's swing shift assignment. Ms. Manning's supervisor twice attempted to discuss options with her, first in person and then by phone. Instead of discussing potential alternative accommodations with her supervisor, Ms. Manning declared she had no choice but to quit after learning that Kohl's would not grant her desired accommodation. She then exited the store manager's office, refusing to discuss options after the store manager followed her. When the store manager later called Ms. Manning, she again refused to discuss alternatives.

The court found that Ms. Manning did not engage in the interactive process in good faith and was primarily responsible for the breakdown of that process. As a result of Ms. Manning's failure to participate in the process and Kohl's good faith attempts to consider various accommodations, the court found no evidence that Kohl's discriminated against Ms. Manning.

On Ms. Manning's constructive discharge claim, the court found there was no evidence that Manning's working conditions were so onerous, abusive or unpleasant that a reasonable person would have felt compelled to resign.

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Despite Ms. Manning's concerns about the impact of her work schedule on her health, her choice to quit was not reasonable because it was premature and assumed that Kohl's would not provide her any accommodations.

For employers, this case presents several key reminders about engaging in the ADA's interactive process. First, employers are required to engage in an interactive process that includes efforts both to communicate with an employee and to provide accommodation based on the information presented to the employer. Second, employers and employees must engage in good faith in the interactive process, meaning that both parties must make earnest attempts to discuss the requested accommodation and reasonable alternatives. Finally, when an employer initiates and engages in an interactive dialogue with an employee, and the employee refuses to participate in that process in good faith, evidence of that refusal will help to overcome a claim of disability discrimination.

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