

# CLIENT NEWS BRIEF

## Employer's Duty to Provide Reasonable Accommodations to Disabled Employees Reinforced by Court

An employer's duty to engage in an interactive dialogue process and provide reasonable accommodations to a disabled employee was reaffirmed in a recent case, *Swanson v. Morongo Unified School District* (Nov. 26, 2014) 2014 Cal.App.Lexis 1183. In this case, which is relevant for school and municipal employers alike, the court of appeal held that a disabled employee could sue her employer for its refusal to reassign her as a reasonable accommodation.

The California Fair Housing and Employment Act (FEHA) (Gov. Code, § 12940, *et seq.*) makes it unlawful for an employer to discriminate against an employee or applicant for employment on the basis of the employee's known medical condition or disability. FEHA places an affirmative duty on employers to provide reasonable accommodations to a disabled employee or applicant. A reasonable accommodation is defined as "any modification or adjustment to the workplace that enables the employee to perform the essential functions of the job held or desired." The FEHA requires an employer to engage in an ongoing interactive dialogue with an employee to determine effective reasonable accommodations, in response an employee's request. Further, an employer has a duty to reassign a disabled employee if an already-funded, vacant position at the same level exists. The employer also has an obligation to provide the disabled employee preference for a vacant position over non-disabled employees.

During the 2006-2007 school year, Lauralyn Swanson taught in Morongo Unified School District and received excellent performance evaluations. In the summer of 2007, Ms. Swanson was diagnosed with breast cancer and subsequently informed her employer of her condition. Ms. Swanson began chemotherapy and radiation treatment in the fall of 2007 and was on medical leave until early March 2008. She did not receive an evaluation but her principal wrote a positive recommendation. In June 2008, the school district reassigned Ms. Swanson to a position teaching fifth grade. Ms. Swanson objected, stating her health would prevent her from taking on additional work to prepare for the new assignment. Ms. Swanson requested reassignment to a vacant position at the second grade level because she had recent experience teaching second grade. The District denied her request, assigning a different teacher to the second grade position, and giving Ms. Swanson a position at the kindergarten level. Ms. Swanson expressed concerns about teaching the kindergarten class because of her weak immune system and the threat of illness posed by teaching kindergarteners.

In the fall of 2008, Ms. Swanson again took a medical leave and was hospitalized, which she attributed to her kindergarten teaching assignment. Ms. Swanson did not return to work until December 2008. Upon her return, Ms. Swanson received a series of poor evaluations and was not rehired for the following school year. Ms. Swanson brought suit, claiming the school district unlawfully discriminated against her by not renewing her teaching contract and failed to reasonably accommodate her disability or engage in the interactive dialogue process.

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The school district argued that it could choose not to renew Ms. Swanson's contract for any reason because Ms. Swanson was a probationary teacher with no right to have her contract renewed. The court of appeal disagreed, finding that a school district's authority to not renew a probationary teacher's contract did not permit the school district to unlawfully discriminate against Ms. Swanson. According to the court, the school district failed to provide evidence that the kindergarten and fifth grade assignments were reasonable accommodations, or that the second grade assignment was not available or otherwise not a reasonable accommodation. Further, the school district failed to provide any evidence that it engaged in the interactive dialogue process with Ms. Swanson once it was notified of her disability.

This case reaffirms both a school district's and municipal employer's duty to provide reasonable accommodations to a disabled employee and engage in an ongoing interactive dialogue. For school districts, it is important to remember that a decision not to renew a teaching contract or to non-reelect a probationary employee must be based on a nondiscriminatory reason.

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