

PWDCRA ASSESSMENT OF ESSENTIAL FUNCTIONS AND REASONABLE ACCOMMODATIONS GIVEN PHYSICAL EXAMINATION REQUIREMENT

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After a December 2015 change in law, 36th District Court bailiffs with disabilities are treated like most Michigan employees with disabilities, meaning they are eligible for reasonable accommodations that do not impose an undue burden, but they are not excused from performing the essential functions of their positions. In *Estate of Jackson v. 36th District Court*, No. 16-012009-CD (Mich. Ct. App. Sept. 3, 2019), two bailiffs, Jackson and Weatherly, alleged discrimination on the basis of their disabilities and age, in violation of the Persons with Disabilities Civil Rights Act ("PWDCRA") and the Elliot-Larsen Civil Rights Act ("ELCRA").

After the change in law, plaintiffs and their former coworker, all of whom were in their 80s, were scheduled for physical examinations. It should be noted that, generally, an employer cannot make disability-related inquiries or request medical examinations unless they are job-related and consistent with business necessity (i.e., the employer reasonably believes, based on objective evidence, that: (1) an employee's ability to perform essential job functions will be impaired by a medical condition; or (2) an employee will pose a direct threat due to a medical condition).

In *Estate of Jackson*, the examining physician was provided with a copy of the bailiff job description, which required the "[p]hysical ability to frequently perform [the] essential physical functions of the job, including, but not limited to lifting[,] moving furniture, appliances and other objects, and climbing stairs" and the maintenance of a driver's license. Jackson suffered from several diagnoses and required the use of an oxygen machine and a wheelchair. Weatherly exhibited poor balance, delayed cognitive and multi-tasking skills, and significant visual impairment. The 36th District Court concluded

that there were no reasonable accommodations which would allow Jackson or Weatherly to perform the essential functions of their bailiff positions, and their employment was terminated. The third bailiff also subject to the physical examination was retained because he passed the examination.

In the course of the litigation, Jackson and Weatherly argued that they were qualified, disabled individuals because they could have performed their jobs with the aid of several accommodations (e.g., employing a "crew" to whom bailiff duties could be delegated). The Court found these accommodations unreasonable because they sought to modify the essential functions, and the duty to accommodate "does not reach that far." Plaintiffs were not qualified, disabled individuals, and their claims under the PWDCRA were dismissed.

Plaintiffs' age discrimination allegations also failed. Plaintiffs suggested that they were subject to the physical examinations "because they are old." The Court cited the third bailiff's continued employment and the legitimacy of the bailiffs' failed examinations in its dismissal.

This case demonstrates the importance of determining what functions are essential and, utilizing the interactive process, whether there exist reasonable accommodations to which employees with disabilities may be entitled. Contact a Bodman Workplace Law Group attorney to assist with engaging employees in this interactive process, determining the reasonableness of a proposed accommodation, and deciding whether physical examinations are appropriate.



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