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A Workplace Law Update

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Sixth Circuit Clarifies an Employee's Duty to Disclose a Disability and Request an Accommodation

By: Rebecca Seguin-Skrabucha, Member, Workplace Law Group

A recent opinion by the Sixth Circuit Court of Appeals ("Sixth Circuit" or "Court"), *Hrdlicka v. General Motors* (March 23, 2023), confirmed that an employee must sufficiently alert their employer of the need for a reasonable accommodation in order to successfully articulate a claim of disability discrimination under state and federal law.

Haley Hrdlicka ("Hrdlicka") was a long-time employee of General Motors when she "reluctantly accepted" a transfer from the Sculpting Department to the Design Academy. Once transferred, Hrdlicka claimed that the new "environment and leadership" were hostile, and she requested to be transferred back to her former position. Hrdlicka's request was denied because the former position had been eliminated. Shortly thereafter, between May 2019 and August 2019, Hrdlicka began regularly arriving late to or altogether missing work. Explanations provided by Hrdlicka included the following: headaches, her daughter's sickness, "a fever and other symptoms," "a tough time," "not feeling well," and "a mental thing." She was verbally counseled, and the attendance issues were cited in her mid-year performance review in July 2019.

In August 2019, Hrdlicka missed several "critical" work days – she had "chief responsibility" over the summer-intern program and was absent during the interns' formal presentations. On August 14, 2019, Human Resources and Hrdlicka's supervisor presented Hrdlicka with an "Attendance Letter," which advised her of leave options and warned that failure to correct her absenteeism could result in disciplinary action, up to and including employment termination. Hrdlicka was tardy without warning on the next two working days. Then, on August 19, 2019, Hrdlicka requested a transfer back to the Sculpting Department as an "accommodation" because she was "unhappy in the Design Academy and with [her supervisor's] leadership." Hrdlicka claims (and General Motors disputes) that she disclosed that she "had been experiencing severe depression since [her] transfer to the Design Academy . . . [and] this had caused [her] to request a transfer . . . and to be absent from work . . . and to arrive later than usual." Hrdlicka was tardy again on August 20, 2019 and was then terminated.

Hrdlicka submitted an internal appeal of her termination. While the appeal was pending, Hrdlicka was diagnosed (for the first time) with Persistent Depressive Disorder and a brain tumor. General Motors denied Hrdlicka's appeal because her termination was consistent with its attendance policies, and "there was a lack of suitable 'evidence to substantiate [her] allegations of depression' at the time of her termination." Hrdlicka then filed suit, alleging, in part, disability discrimination and failure to accommodate under the Americans with Disabilities Act ("ADA") and Michigan Persons with Disabilities Civil Rights Act ("PWDCRA"). The district court granted the motion for summary judgment by General Motors, and Hrdlicka appealed to the Sixth Circuit.

To establish a *prima facie* case of disability discrimination, a plaintiff must show: "(1) she has a disability, (2) she is otherwise qualified for the job 'with or without reasonable accommodation,' (3) she 'suffered an adverse employment decision,' (4) her employer 'knew or had reason to know' of her disability, and (5) her position remained open, or she was replaced."

The Sixth Circuit upheld the district court's ruling that Hrdlicka failed to establish a *prima facie* case because "her purported disability was unknown to either herself or General Motors until well after her employment was terminated." The Sixth Circuit found that Hrdlicka's explanations for her tardiness and absences "were not sufficient to apprise [General Motors] of a disability" because they "reference only generalized ailments"; furthermore, the mention of depression during the August 19 meeting was presented merely as "a workplace conflict, not a disability," and "depression does not always render an employee 'disabled.'" The Court also held that, even if Hrdlicka could establish a *prima facie* case, dismissal was still required because General Motors established its legitimate, non-discriminatory, and non-pretextual reason for termination (i.e., repeat attendance failings despite progressive discipline and warnings).

As to her failure-to-accommodate claim, the Sixth Circuit held that Hrdlicka "did not identify a reasonable accommodation" because her "motivation" for the transfer request back to the Sculpting Department "was based on her dislike of the Design Academy and the people within it," as opposed to her proclaimed disability. The Sixth Circuit emphasized that "[a] transfer request is not reasonable if it was made to avoid working with certain people."

This case serves as a reminder that, though employers must engage employees in the interactive process when they request a reasonable accommodation for their disability, employees need to sufficiently apprise their employers of a disability and the need for an accommodation. Employers should train supervisors on the ADA and the reasonable accommodation process to properly identify when the duty to accommodate is implicated.

Contact any member of **Bodman's Workplace Law Group** to discuss what disclosures by employees trigger action by their employer. Bodman cannot respond to your questions or receive information from you without establishing an attorney-client relationship and clearing potential conflicts without other clients. Thank you for your patience and understanding.

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