YOUR EMPLOYEE’S PERMANENT RESTRICTION DOES NOT EXCUSE ACCOMMODATION

In Kauffman v. Peterson Health Care VII, LLC, No. 13-3661, October 16, 2014, 7th Circuit, the employee filed an ADA action alleging that the employer improperly denied the employee-hairdresser’s request of accommodation of having someone else push wheelchairs of the employee’s clients in order for the employee to perform hairdressing services. The employer argued that pushing wheelchairs was an essential part of the employee’s job and that no reasonable accommodation would enable her to perform her job. The court held that pushing wheelchairs of clients formed only a small part of the employee’s job in terms of time spent on the job. Further, the question remained as to whether the employer could reasonably accommodate the employee’s request that co-workers perform the pushing. The court rejected the employer’s position that it would not accommodate anyone with a permanent restriction. The court held a permanent restriction does not excuse an employer from making any attempt to accommodate.

AN ILLINOIS LAW STRENGTHENS WORKPLACE RIGHTS FOR PREGNANT WOMEN AND NEW MOTHERS

A new Illinois law requires employers to provide a range of reasonable accommodations to pregnant women and new mothers. Public Act 98-1050 becomes effective January 1, 2015. The Act amends the Illinois Human Rights Act to include pregnancy as a protected class. Pregnancy is defined as pregnancy, childbirth or medical or common conditions related to pregnancy or childbirth. Thus, the Act covers childbirth and is applicable after the child is born. The Act prohibits discrimination in hiring and employment for pregnant workers and those affected by a medical or common condition related to pregnancy or childbirth. Employers must provide accommodations to pregnant employees such as more frequent or longer bathroom breaks and assistance with manual labor. As usual, the Act requires that employers post notices regarding the Act and employees’ rights under the Act. The Act covers all employers not just employers with 50 or more employees as does the FMLA. The Act also states that the accommodation requirement is an interactive process just as is the process under the ADA.

OWNERS ARE NOT PROTECTED UNDER THE ADA AND TITLE VII

In Bluestein v. Central Wisconsin Anesthesiology, S.C., No. 13-3724, October 15, 2014, 7th Circuit, the ADA and Title VII action alleged that the employer terminated the employee on account of her disability. The court found that the plaintiff was a full partner/shareholder, as well as a member of the employer’s board of directors. The court held that the plaintiff was, therefore, not an employee
as that term is contemplated under the ADA and Title VII, but was an employer and not protected under those statutes. The record showed that the plaintiff had equal rights to vote on all matters, shared equally in defendant’s profits and liabilities, participated in hiring and firing decisions, and had equal right to influence defendant’s workplace policies.

YOUR HONEST BELIEF IN A LEGITIMATE REASON PREVENTS A FINDING OF PRETEXT FOR TERMINATION

In Loyd v. Saint Joseph Mercy Oakland, 2014 WL 4434200 (6th Circuit, 2014), the employee filed an age discrimination claim. The hospital gave a legitimate non-discriminatory reason for terminating the 52 year old employee which was based on the honest belief that the employee had committed a serious infraction of insubordinate behavior. The hospital relied on statements given by two other employees who witnessed the incident indicating that the plaintiff employee contradicted medical personnel by telling a patient she was free to leave. The court held, therefore, that the employer’s proper reason for termination was not a pretext for age discrimination under the ADEA.

ILLINOIS INSURANCE DEPARTMENT ISSUES BULLETIN ON COVERAGE FOR TRANSGENDER INSUREDS

Illinois Insurance Department bulletin 2014-10 reminds insurers that the law prohibits discrimination against transgender policyholders. The bulletin cites current Illinois law and the Affordable Care Act, which both prohibit discrimination by insurers against transgender people because of their gender identity. The bulletin describes that many transgender patients face hurdles getting coverage for hormone therapy and blood testing required to monitor the effects of the hormones, a procedure that is routinely available and covered for post-menopausal women. The Illinois Department of Insurance Bulletin states that such denials are discriminatory and not permitted under current law.

YOUR PRIOR DISCIPLINE CAN PREVENT A FAILURE TO ACCOMMODATE CLAIM

In Cody v. Prairie Ethanol, LLC, 2014 WL 3973094 (8th Circuit, 2014), the plaintiff filed an ADA claim after being terminated. The employer argued that the reason for terminating the employment was the employee’s overly aggressive style of operating an ethanol plant, which resulted in plant machinery slowing down on three occasions and nearly going off line on one of those three occasions. The record showed that a manager orally warned the plaintiff about his overly aggressive manner in operating the plant well before learning that the plaintiff would need additional light-duty accommodation. The employee conceded that his unnecessary changes did cause plant machinery to slow down and to nearly go offline and that he had been previously counseled to be less operationally aggressive. Further, the employee had been placed on two performance improvement plans because he had received inadequate performance assessment scores. Finally, the other employee who did not have a disability and was not terminated based on performance deficiencies was not similarly situated to the plaintiff because the other employee’s offenses were not of the same or comparable seriousness.