



November 12, 2003

Employees Have A Duty To Cooperate During the Interactive Process

On November 11, 2003, the Ninth Circuit Court of Appeals ruled that an employer has no duty under either the Americans with Disabilities Act (ADA) or state law to engage in an interactive process regarding an employee's former position where the employee fails to provide any information that he can still perform that type of work. *Allen v. Pacific Bell*.

The plaintiff in *Allen* sought a reasonable accommodation to return to his Services Technician position at Pacific Bell. The plaintiff asked to be a Services Technician, but without the requirement of climbing poles and ladders. Pacific Bell argued that even if it complied with this request for an accommodation, the plaintiff still would not be qualified to perform the essential tasks of a Services Technician. Additionally, two doctors evaluated the plaintiff and determined that he was only capable of performing a desk job.

In light of the doctors' findings, Pacific Bell searched for a sedentary position for the plaintiff. The plaintiff, however, continued to request a return to his Services Technician position. Pacific Bell reconsidered its decision pursuant to company policy by asking the plaintiff to provide medical documentation to support his contention that his physical condition had improved. Because the plaintiff failed to provide any such evidence, the Ninth Circuit found that Pacific Bell "did not have a duty under the ADA or California law to engage in further interactive processes with respect to the Services Technician position."

Regardless of the plaintiff's ability to perform the job duties of a Services Technician with an accommodation, Pacific Bell still had a duty to engage in an interactive process to determine whether an alternative accommodation existed within the company for the plaintiff. On this issue, the Court ruled in favor of Pacific Bell because Pacific Bell, along with the plaintiff's collective bargaining agent, had established a system by which disabled employees could obtain alternative positions, provided the employees passed certain qualifying tests. One of these tests was a keyboard test, for which the plaintiff failed to appear. This failure resulted in the plaintiff losing all further rights to additional accommodation under Pacific Bell's policies and the collective bargaining agreement. The Court concluded that the plaintiff failed to cooperate with the job-search process, and that Pacific Bell had fulfilled its interactive duty.

Allen v. Pacific Bell is a helpful case for employers who are faced with disability cases involving issues of reasonable accommodation and interactive duties. It clarifies the employer's burden to provide for a requested accommodation, and the employee's burden to cooperate during the interactive process.

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