

## Massachusetts Appeals Court Holds that Overtime Work Is Not an Essential Function of Inpatient Nursing Position

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In *Tufts Medical Center v. Dalexis et. al.*, the Massachusetts Appeals Court held that a hospital employer failed to engage in the interactive process, and discriminated against and constructively discharged a disabled nurse by failing to excuse her from the obligation to work overtime when needed.

The nurse was diagnosed with rheumatoid arthritis and interstitial lung disease, causing her to experience stiffness, lack of energy, difficulty breathing, pain in her lungs and an inability to run or climb stairs. In 2007, the hospital excused her from working overtime as a temporary accommodation for her disability. The nurse went on medical leave, and upon her return, was offered an inpatient nursing position on the night shift.

Subsequently, the nurse presented a note from her doctor stating that she was unable to work overtime or overnight shifts due to her disability. The hospital concluded the nurse was not eligible for an inpatient nursing position because the ability to work overtime when needed was an essential function of the position.

In Massachusetts, determining whether a job function is "essential" is intensely fact-specific and involves a multi-prong inquiry including factors such as: (1) the employer's judgment as to which functions are essential; (2) written job descriptions prepared before advertising or interviewing applicants for the job; (3) the amount of time spent on the job performing the function; (4) the consequences of not requiring the incumbent to perform the function; (5) the terms of a collective bargaining agreement; (6) the work experience of past incumbents in the job; and/or (7) the current work experience of incumbents in similar jobs. The Appeals Court recognized that analyzing whether overtime was an essential function under the existing framework was challenging, in part, because the need for overtime was determined by unpredictable factors.

Ultimately, the Court held that overtime work was not an essential function of the inpatient nursing position, because mandatory overtime was not part of the Collective Bargaining Agreement between the nurses and the hospital, some nurses performed as little as three hours of overtime during a full year, more than five percent of the hospital's nurses worked no overtime at all, and the nurse herself was previously granted a temporary accommodation exempting her from working overtime. That said, the Court recognized that in some employment situations, overtime could be an essential function of the job, it just was not under the particular facts of this case.

Massachusetts employers faced with a request for no-overtime as an accommodation from a potential disabled employee should ensure that they are fully engaging in the interactive process with the employee to determine whether there is an accommodation that is acceptable to both the employer and employee. In addition, employers who believe that overtime is an essential function of a particular position should ensure that a CBA governing such unionized employees reflects that understanding. Finally, *Tufts Medical Center* serves as a reminder to employers that whether a job function, including overtime work, is "essential" is extremely fact specific and must be analyzed thoughtfully.

For more information about this or any other Massachusetts employment issues, please contact R. Victoria Fuller (fullerv@whiteandwilliams.com; 617.748.5223) or Victoria M. Ranieri (ranieriv@whiteandwilliams.com; 617.748.5235).

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