JURY AWARDS $2.6 MILLION TO PHARMACIST WITH “NEEDLE PHOBIA”

Have you ever heard of trypanophobia? If not, it means a fear of needles, which, in this case, resulted in a jury verdict of $2.6 million to a Rite Aid pharmacist whose fear of needles prevented him from giving flu shot immunizations as a required part of his job.

IS "NEEDLE PHOBIA" AN ADA DISABILITY THAT REQUIRES ACCOMMODATION?

This surprising verdict arose out of an ADA complaint filed in a New York federal district court. The pharmacist had worked for Rite Aid and its predecessors since 1977. In 2011, the company adopted a mandatory policy that required all pharmacists to undergo immunization training so that they could provide customers with flu shots when necessary. When informed of the new policy, the pharmacist told his boss that he was needle phobic and could not administer injections. He followed up with a letter that said,

"I have a disability that will prevent me from becoming an immunizing pharmacist. Because of this condition I would never even consider trying to become an immunizing pharmacist. I believe that the ADA would direct the company to provide an accommodation."

The company then investigated the pharmacist's claim and ultimately concluded that his condition was not a disability under the ADA and that being able to provide immunizations was an essential part of the job. This seems reasonable except that the district court judge, after oral argument, denied Rite Aid's motion for summary judgment (ruling from the bench without a written opinion) and ordered the parties to try the case to a jury.

NEEDLE PHOBIA - QUESTION OF FACT OR OF LAW?

Apparently the judge concluded that there were material issues of fact that had to be decided by a jury. I say apparently because, except for the transcript of the oral argument that is not yet available, we can't really say why the judge ruled the way he did. But it does appear that he believed that the question of whether needle phobia is a disability under the ADA is a question of fact and not of law. Many, if not most, courts would have held the question of disability as one of law and not of fact. There is also some indication in his ruling that the judge may have considered that engaging in the good faith interactive process was *required* under the ADA and that for the company to fail to do so is an independent violation of the ADA. Again, most courts would hold otherwise.

YOU CAN'T PREDICT WHAT THE JURY WILL DO

In any event, the case went to trial where the jury was to decide if Rite Aid fired the needle phobic pharmacist because of his disability without providing a reasonable accommodation. There was some evidence that the pharmacist learned after being fired that he could have undergone some psychological therapy to reduce his phobia. There was also evidence that in all his years of being a pharmacist with Rite Aid, he had never been asked to give an injection. Further, there was evidence that there were other pharmacists who could have given injections if he couldn't.

In rendering its verdict, the jury in this case was asked to answer several direct questions by the court. This is the key question that the judge put to the jury:

> Has Plaintiff [...] proven by a preponderance of the evidence that he was discharged because of a disability in violation of the ADA?
>
> (Note: Your answer to this question must take into account whether Rite Aid has proven by a preponderance of the evidence that providing an accommodation that would allow Plaintiff to perform the essential functions of his job, if such accommodation was required and exists, would constitute an undue hardship to the employer. If you find that Rite Aid has proven this, then you must answer this question "no.")

The jury answered "**yes**" and so moved on to awarding damages. The damages were not small: back pay of $485,633; front pay covering 4.75 years in the future of $1,227,188; and emotional distress of $900,000. Interestingly, the jury did not award any punitive damages.

WHAT DOES THIS MEAN?

It means that employers will often have a very tough time defending a case in front of a jury. This is especially true when the plaintiff is a long-term employee who is fired after claiming a disability while requesting and expecting an accommodation. This is well illustrated in this

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case where the condition the employee claims may not actually be a disability under the ADA. In general, an employer is better off not worrying about whether a particular condition is technically a disability but working with the employee to determine if there is something that might allow them to get the job done. That way either: a) the employee is accommodated so that the job can be done; or b) by working with the employee through the good faith interactive process, a record can be established that the employer and the employee tried but couldn't find a reasonable accommodation. Either way, the employer is in better shape.

We have written about this good faith interactive process several times in our HR Insights Blog. More often than not, the process works and litigation is avoided or a stronger defense is created if a lawsuit happens.

Reference: *Stevens v. Rite Aid Corp., (N.D. New York, Case 6:13-cv-00783-TJM-DEP, 1/22/15).*

If you have any questions, please contact Steve Lyman at slyman@hallrender.com or your regular Hall Render attorney.

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