

## New Jersey Supreme Court Ruling Expands Employers' Potential Liability in Failure-to-Accommodate Disability Claims

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The New Jersey Supreme Court has finally settled the issue of whether New Jersey employees must demonstrate the existence of an adverse employment action (i.e., transfer, suspension, failure to promote, termination, etc.) to establish that their employer failed to accommodate a disability under the New Jersey Law Against Discrimination (LAD). The Court's June 8, 2021 unanimous decision in *Richter v. Oakland Board of Education* held that the adverse employment action element is not necessary to state a failure-to-accommodate claim under the LAD.

The Court further held that the so-called "exclusivity" provision of the New Jersey Workers' Compensation Act (WCA), which relegates employees to recovery under the WCA for any bodily injury sustained at the workplace, does not bar an employee's complementary LAD claims. These two rulings will have far-reaching implications for employer liability in all LAD cases moving forward and reinforce the importance of an employer's responsibility to engage in the interactive process with employees, especially as workplaces reopen in New Jersey.

### Background

Typically, an employee, as plaintiff, must demonstrate the following elements to establish that an employer has failed to accommodate their disability: 1) the plaintiff has a disability; 2) the plaintiff is able to perform the essential functions of the job with or without reasonable accommodations; and 3) the employer has failed to reasonably accommodate the disability. However, prior to *Richter*, the Supreme Court's 2010 decision in *Victor v. State* left open the question of whether a plaintiff is also required to prove that an employer took some adverse employment action against the plaintiff. Although two later decisions in *Royster v. State Police* (2017) and *Caraballo v. City of Jersey City Police Department* (2019) recited the original elements listed above, both decisions remained silent as to whether an adverse employment action was an additional required element.

The plaintiff in *Richter* (a teacher) filed a lawsuit against her employer (a school district), alleging that the school district's failure to accommodate her disability (type 1 diabetes) led to her suffering a diabetic seizure in front of her students that resulted in serious and permanent physical injuries. On several occasions, the plaintiff requested accommodations by way of adjusting her work schedule to assist in the effective management of her condition, however the school district ignored the requests and failed to engage in an interactive process. Importantly, the school district never took adverse employment action against the plaintiff.

The school district initially moved to dismiss the plaintiff's claim because she sought and obtained workers' compensation benefits to cover the costs of her injuries via the WCA's exclusive remedy provision. After that motion was denied, the school district moved for summary judgment, arguing that it never took adverse employment action against the plaintiff. The motion for summary judgment was granted. On appeal, the Appellate Division affirmed the motion to dismiss and reversed the grant of summary judgment, holding that a plaintiff need not demonstrate the existence of an adverse employment action to establish a failure-to-accommodate claim under the LAD. The school district thereafter sought relief as to both motions before the New Jersey Supreme Court, which upheld the Appellate Division's decision.

### **Significance of *Richter* Ruling**

By eliminating the adverse employment action element, the Supreme Court in *Richter* finally put to bed the question of whether an employee can prevail on a failure-to-accommodate claim under the LAD where an employer has not suspended, terminated, or otherwise taken adverse action against the employee. This holding solidifies the legitimacy of failure-to-accommodate claims under the LAD where an employee toils on with a medical condition as the employer ignores her/his accommodation request. Further, to avoid any potential confusion as to whether an employer's failure-to-accommodate in any given instance theoretically constitutes an "adverse employment action," the Supreme Court explicitly held that "an employer's failure to accommodate is itself an actionable harm."

The *Richter* Court also held that the WCA's exclusive remedy provision does not preclude LAD claims because it would purportedly result in a "double recovery" to successful plaintiffs. The Court noted that the LAD's overarching purpose of eliminating the "cancer of discrimination" from the workplace requires that it be harmonized with other statutory frameworks that offer relief for different workplace harms. Specifically, the Court held that there was no danger of a potential double recovery for successful plaintiffs that have received workers' compensation benefits for the injuries alleged in their complaints because these two statutes were enacted to address different workplace harms. However, the Court did not foreclose employers from seeking a workers' compensation lien to offset those portions of workers' compensation benefits that were paid to successful plaintiffs, as provided in Section 40 of the WCA.

### **Key Takeaways for Employers**

The Supreme Court's holdings will obviously have a far-reaching impact on New Jersey employers, as it significantly expands potential liability for employers to all LAD claims across the board. However, the most important takeaway from *Richter* is the importance of an employer's responsibility to proactively engage in the interactive process with employees who have a disability. When an employer receives a request for an

accommodation, it should engage in the interactive process in good faith to determine a reasonable accommodation that would not present an undue hardship to the employer. Employers should also be mindful that requests for accommodation do not need to contain any special triggering language to implicate the LAD or the federal Americans with Disabilities Act (ADA). An employee simply expressing concern about their ability to perform the functions of the job because of a medical condition could be sufficient notice.

To avoid potential workplace injuries to employees (such as in *Richter*) - and to avoid potential liability for same - employers should follow up on all arguably vague disability accommodation requests and engage in the interactive process. As workplaces continue to reopen in New Jersey, employers must be especially sensitive to employees with particular medical conditions that place them at higher risk of contracting COVID-19, or that would otherwise exacerbate its symptoms. Finally, employers must be mindful of ADA/LAD considerations when developing and implementing workplace vaccination policies and carve out exceptions (both written and by way of an interactive process) to accommodate employees with qualifying disabilities as they re-enter the workplace.

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