



The Interactive Process of Reasonable Accommodation under the WLAD Demands Cooperation and Active Participation

By Stephanie E. Duvall & Michael H. Weier • August 29, 2014

The duty to reasonably accommodate an employee's disability can generate fear of legal action for many employers who may not fully understand their responsibilities as determined by the Washington Law Against Discrimination (WLAD).¹

All three divisions of the Washington State Court of Appeals affirmed the employer's statutory duty to reasonably accommodate an employee's disability, but recent interpretations reveal the employee, as well as the employer, has a duty to actively cooperate in a reciprocal and interactive process to identify suitable accommodations for a disability under the WLAD.

In *Santos v. Washington State Office of the Insur. Comm'n*,² Division II (Tacoma) declared the WLAD requires an employer to reasonably accommodate an employee with a disability, unless the accommodation places an undue hardship on the employer.³ The Court explained, "The central concept is that an employer cannot fire an employee for poor job performance if the poor job performance was due to a disability and reasonable accommodation would have rectified the problem."⁴

In *Lusebrink v. Kent School Dist.*,⁵ Division I (Seattle) discussed possible approaches to reasonably accommodate an employee's disability. The employee asserted the school district employer's duty under the WLAD amounted to an "affirmative requirement" to reassign the allegedly disabled employee to an "open position for which she is qualified, even if there are more qualified applicants."⁶ The Court disagreed and declared, "Reassignment is one method of reasonable accommodation for an employee who becomes disabled on the job . . . But reassignment to an open position is not mandatory as a matter of state law."⁷

In *Brownfield v. City of Yakima*,⁸ Division III (Spokane) similarly addressed an employer's duty of reasonable accommodation and announced, "[T]he best way for the employer and employee to determine a reasonable accommodation is through a flexible, interactive process."⁹ The Brownfield opinion, and the relevant statutory provision¹⁰, contemplates a sharing, or exchange, of information between the employer and the employee. The employee must place the employer on notice of the disability, whether the

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impairment is temporary or permanent in nature, and **the employee must cooperate** with the employer's efforts to accommodate.¹¹ (emphasis added)

Division I (Seattle) again addressed the cooperative exchange of information between a disabled employee and the employer in *Brooks v. BPM Senior Living Co.*¹² In this case, the Court declared, "To reach a reasonable accommodation, employers and **employees should seek and share information with each other** to 'achieve the best match between the employee's capabilities and available positions.'"¹³ (emphasis added)

If you have questions regarding compliance with the WLAD's reasonable accommodation requirement or the interactive process, please contact one of the attorneys in our Washington Practice Group. ■

¹ Chapter 49.60 of the Revised Code of Washington. The law embodies the state's corollary to the federal American's with Disabilities Act of 1990, 42 U.S.C. Sec. 12101.

² *Santos*, Wn. App., No. 42431-2-II (2013) (unpublished).

³ *Id.* at 9, citing *Riehl v. Foodmaker, Inc.*, 152 Wn. 2d 138, 145, 94 P.3d 930 (2004).

⁴ *Id.* at 9, citing *Parsons v. St. Joseph's Hosp. & Health Care Ctr.*, 70 Wn. App. 804, 807, 856 P.2d 702 (1993).

⁵ *Lusebrink*, Wn. App., No. 69348-4-I (2014) (unpublished).

⁶ *Id.* at 9.

⁷ *Id.* at 10; citing *Pulcino v. Fed. Express Corp.*, 141 Wn.2d 629, 643, 9 P.3d 787 (2000), *overruled in part on other grounds by McClarty v. Totem Elec.*, 157 Wn.2d 214, 137 P.3d 844 (2006).

⁸ *Brownfield*, 178 Wn. App. 850, 876 (2014).

⁹ *Id.* at 876.

¹⁰ RCW 49.60.040(7)(d).

¹¹ *Brownfield*, at 876; *Goodman v. Boeing Co.*, 127 Wash.2d 401, 408-09, 899 P.2d 1265 (1995).

¹² *Brooks*, Wn. App., No. 69332-8-I (2014).

¹³ *Id.* at 8, citing *Goodman*, at 409.