

Removing Essential Job Functions Not Reasonable Disability Accommodation under California Law, Court Rules

By Mark S. Askanas

March 3, 2015

Affirming summary judgment in favor of an employer on an employee's disability discrimination claims under the California Fair Employment and Housing Act ("FEHA"), the California Court of Appeal has ruled that the employer was not required to eliminate essential functions of a position as a reasonable accommodation. *Nealy v. City of Santa Monica*, No. B246634 (Cal. Ct. App. Feb. 13, 2015).

The Court further held that reassigning the employee to a position for which he was not qualified and granting him an indefinite leave of absence until a suitable position became available also were not reasonable accommodations.

As to the employee's retaliation claim, the Court held that a request for a reasonable accommodation alone was insufficient to establish the employee engaged in protected activity.

Background

Tony Nealy worked for the City of Santa Monica as a solid waste equipment operator. Nealy had sustained many work-related injuries to his knee and back requiring multiple surgeries and several leaves of absence. In 2010, Nealy's physician reported that Nealy could return to work subject to certain work restriction. He was precluded from kneeling, bending, stooping, squatting, walking over uneven terrain, running, prolonged standing relative to the right knee, climbing, and heavy lifting.

In July 2010, the City met with Nealy to discuss his interest in returning to work as a solid waste equipment operator. The City identified the essential functions of the position that it believed Nealy could not perform based on his medical restrictions, including, among others: clearing debris and trash from the hopper of vehicles; conducting vehicle inspections; pushing trash bins through walkways or alleys; retrieving bulk items left outside of bins; walking on uneven surfaces; and climbing ladders to access the vehicles.

After additional discussions, the City concluded it could not reasonably accommodate Nealy in the position and offered to reassign him to another position. Nealy applied for a city planning staff assistant position; however, he did not have the appropriate experience. The City extended Nealy's leave of absence to allow him to apply for a disability retirement. However, Nealy's application was rejected because he failed to submit required information.

Nealy then sued the City under the California FEHA for disability discrimination and retaliation. The trial court granted the City's motion to dismiss Nealy's claims. Nealy appealed.

Applicable Law

The FEHA proscribes certain disability-related practices, each of which is a separate cause of action. The law prohibits employers from:

- discriminating against employees because of their physical disability;
- failing to make reasonable accommodation for employees' known physical disabilities;
- failing to engage in a timely and good faith interactive process to determine effective reasonable accommodations; and
- retaliating against employees for opposing prohibited practices.

Essential Functions

Meet the Author



Mark S. Askanas

Principal
San Francisco 415-394-9400
Email

Nealy argued he could perform the essential functions of the solid waste equipment operator position because, with his restrictions, he could operate an automated side loader. The appellate court rejected this argument because Nealy focused only on one essential function of the position (operating vehicles), although many other job functions are essential to the position. Based on Nealy's restrictions, he could not perform many of these other functions, such as "refuse and recyclable collection/disposal duties," "equipment maintenance/inspection," and "heavy lifting." The Court stated, "the fact that one essential function may be up for debate does not preclude summary judgment if the employee cannot perform other essential functions even with accommodation."

Nealy next argued that he could have remained in his position if the City restructured the position to eliminate the kneeling and heavy lifting requirements and assign him permanently to an automated side loader. The Court disagreed. It explained that the "FEHA does not obligate the employer to accommodate the employee by excusing him or her from the performance of essential functions."

Another Position

Nealy then argued that the City should have reassigned him to a vacant staff assistant position. The Court rejected Nealy's argument because he was not qualified for the position and the City was not required to create a new position for him or provide "an indefinite leave of absence to await possible future vacancies."

Interactive Process

Turning to the interactive process claim, Nealy argued that the City should have considered only the following accommodations: (1) restructuring his old job so that he did not need to lift heavy objects or kneel; (2) assigning him to the automated side loader permanently; (3) reassigning him to another position; and (4) retraining.

The Court rejected Nealy's arguments for the same reasons it rejected his failure-to-accommodate claim. The first two accommodations, it said, were not reasonable because they required elimination of essential job functions. The third was not reasonable because there were no vacant positions for which Nealy was qualified. The Court also rejected the fourth proposal because Nealy provided "absolutely no detail as to what type of retraining would have enabled him to perform the solid waste equipment operator job or some other vacant position."

Retaliation

On his retaliation claim, Nealy argued that his protected activity was seeking the City's assistance in returning to work. The Court found that this was not protected activity because it was simply a request for a reasonable accommodation and did not "demonstrate some degree of opposition to or protest of unlawful conduct by the employer."

Accordingly, the Court affirmed summary judgment in favor of the City and dismissed Nealy's disability discrimination claims.

While employers must engage in the good faith interactive process and provide reasonable accommodations to an employee with a disability, they are not required to eliminate an essential job function or create a new position as an accommodation. In light of this case, employers should review their essential job functions and procedures for considering and responding to requests for reasonable accommodations, and consult with experienced counsel about these complex issues.

Jackson Lewis attorneys are available to answer inquiries regarding this case and assist employers in managing workplace issues.

©2020 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 950+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.

©2020 Jackson Lewis P.C. All rights reserved. Attorney Advertising. Prior results do not guarantee a similar outcome. No client-lawyer relationship has been established by the posting or viewing of information on this website.

*The National Operations Center serves as the firm's central administration hub and houses the firm's Facilities, Finance, Human Resources and Technology departments.