

ADA: Are You Participating in the Interactive Process in "Good Faith"?

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The Americans with Disabilities Act ("ADA") provides that "[n]o covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). Discrimination includes "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity. . . ." 42 U.S.C. § 12112(b)(5)(A). In *Ace v. Armstrong Utilities, Inc.*, Magistrate Judge Robert C. Mitchell, denied Armstrong's motion for summary judgment on a failure to accommodate claim under the ADA. (Civil Action No. 14-526, W.D. PA, February 25, 2016). The Court held that there was a genuine issue of material fact as to whether Armstrong made a "good faith" effort to accommodate the plaintiff, Mr. Ace.

Armstrong employed Ace from 2007 through 2014 as an inside sales agent selling cable television, internet, and telephone services. In August of 2011, Ace was diagnosed with a cancerous brain tumor which caused him to experience oversensitivity to bright lights and loud noises. On March 21, 2015, he was terminated for alleged acts of "slamming" – adding services to customers' bills without their permission or request.

According to the Court, the facts (both undisputed and, as to the disputed ones, those taken in the plaintiff's favor as the non-moving party) demonstrated that Ace requested a quieter seat and stated his preference for a cubicle, but Armstrong did not move him to a cubicle nor did it ask him if the new space met his needs. Further, when he was moved, he immediately told his supervisor that the new workspace was not quieter, yet nothing occurred. Shortly after presenting a doctor's excuse, Ace was investigated for alleged acts of slamming and ultimately terminated from his position with Armstrong. The Court found that: (1) Armstrong did not articulate any reason why it could not have moved Ace to a cubicle; and, (2) Armstrong failed to satisfy the good-faith interactive process as it did not respond to Ace's continuing requests to be moved to a quieter space. Although Armstrong argued that it had a legitimate, nondiscriminatory reason for the termination, the Court precluded summary judgment based upon a failure to accommodate.

In order avoid a similar situation when determining an appropriate reasonable accommodation, employers are reminded that:

- It may be necessary to initiate an informal, interactive process with the employee;
- The interactive process should identify the precise limitations resulting from the disability and the potential reasonable accommodations that could overcome those limitations;
- The interactive process must include sufficient notice to inform the employer that an employee is requesting an accommodation; and,
- The employer and employee must participate in “good faith” in the interactive process.

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