

## **Employer Failure to Provide Reasonable Accommodations for Migraines Results in Legal Headaches**

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In *Bethscheider v. Westar Energy*, the United States District Court for the District of Kansas denied Defendant's motion to dismiss claims under the Americans with Disabilities Act ("ADA"). Alleged by Plaintiff was that her migraine headaches constituted a disability entitling her to a reasonable accommodation. The Company terminated Plaintiff for "excessive absenteeism" despite the fact that only four of her eleven absences between January and May were attributable to her medical condition. Since Plaintiff's headaches usually lasted less than one day, and she made up missed work time the following day, Westar Energy believed that Plaintiff did not require a reasonable accommodation. The Court disagreed, in effect finding that a violation of the ADA might exist.

For a condition to be defined as a disability under the ADA, it must "substantially limit" a "major life activity." The Court relied upon Equal Employment Opportunity Commission regulations defining "substantially limit" to mean that a person is "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities." Plaintiff argued that her migraine headaches, though only affecting her occasionally, "substantially limit" her ability to work. The Court noted that, depending on the facts, migraines may be considered a disability and, thus, Plaintiff set forth sufficient facts to establish a plausible claim at the initial stage of the pleadings.

An employer should be wary of making decisions regarding an employee's medical condition without review of medical documentation and advice of counsel. As further source of concern arises from state laws that are broader than the ADA, requiring employers to provide reasonable accommodation for "lesser" medical conditions.

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