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# No Adverse Employment Action Required to Establish Failure to Accommodate Claim Under New Jersey Law

The New Jersey Appellate Division recently ruled that employees can establish a prima facie claim for failure to accommodate a disability under the New Jersey Law Against Discrimination (NJLAD) without showing they suffered an adverse employment action. The Appellate Division found that "there is no bright-line rule defining an adverse employment action in the context of a [NJ]LAD claim."

In *Richter v. Oakland Board of Education et. al,* Mary Richter, a middle-school teacher with type 1 diabetes, claimed that her employer, the Oakland Board of Education, violated the NJLAD by not permitting her to eat her lunch earlier in the day. This caused her to faint and suffer significant permanent injuries because she became hypoglycemic while teaching.

The Board of Education scheduled Richter for cafeteria duty, supervising student lunch periods. Teachers assigned to cafeteria duty can eat from 1:05 p.m. to 1:49 p.m. (the seventh period of the day). When Richter received her schedule for the first marking period of the 2012-2013 school year, she noticed that her lunch period three days a week was not until seventh period. She thought eating lunch that late in the day would negatively impact her blood sugar levels and asked the principal to change her scheduled lunch period because of her medical condition. The principal neither changed Richter's schedule nor engaged in a (documented) interactive discussion with her regarding her accommodation request for an earlier lunch, as required under the NJLAD. To avoid a hypoglycemic episode when she had a seventh-period lunch, Richter ingested glucose tablets during her sixth-period class to maintain her glucose levels. Her schedule was changed to allow her to eat lunch earlier during the second marking period.

Richter again was scheduled to eat during seventh period on Tuesdays during the third marking period. Despite reminding the principal of her need to have an earlier lunch, she continued to be assigned cafeteria duty and forced to eat lunch during seventh period. Consequently, during Tuesdays in the third marking period, Richter's blood sugar levels often fell below normal range at the end of the sixth period, requiring her to ingest three or more glucose tablets to keep her sugar elevated. During the third marking period, Richter suffered from a hypoglycemic episode that caused her to have a seizure, become unconscious and hit her head and face on a table and the floor, which resulted in serious and permanent injuries.

The Appellate Division found that Richter was under no obligation to demonstrate that she suffered an adverse employment action to sustain her claim for failure to accommodate her diabetes under the NJLAD because she was essentially forced to "soldier on" and continue working without an accommodation. The Appellate Division found that Richter's circumstances "cry out for a remedy."

The New Jersey Supreme Court has decided to hear this case on appeal and determine whether employees alleging discrimination for failure to accommodate a disability are required to show an adverse employment action. While we await the New Jersey Supreme Court's decision, employers are urged to appropriately consider all accommodation requests and determine whether such accommodations would result in undue hardship. Employers are also encouraged to train their management and human resources employees about the NJLAD's reasonable accommodation requirements and protections, including the importance of engaging in and documenting the interactive process with disabled employees.

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