



Easing the Burden on Employers, LIRC Clarifies Employers' Duty to Accommodate Disabled Workers Under the Wisconsin Fair Employment Act

September 23, 2009

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In a significant victory for Wisconsin employers and our firm, the Labor and Industry Review Commission (LIRC) recently provided additional guidance regarding employers' duty to accommodate disabled workers under the Wisconsin Fair Employment Act (WFEA). Easing the weight on employers, LIRC's decision in *Willis v. Stoughton Trailers, Inc.*, ERD Case No. CR200402036 (LIRC Sept. 4, 2009), most notably emphasizes that the complainant, not the employer, "has the initial burden to prove that a reasonable accommodation is available." This recent precedent will make it easier for employers to defend against claims of disability discrimination as well as understand their accommodation responsibilities under WFEA.

Case Facts & Procedural History

The Complainant, Jeffrey Willis, a trained engine mechanic who suffers from profound deafness, applied for a position assembling truck trailers for Stoughton Trailers. The assembly plant is a complex manufacturing matrix, continuously in flux, with several significant safety hazards, including moving cranes, large assemblies, and forklift trucks. Therefore, oral communication and audible warning signals are an integral part of the assembly process and plant environment.

Stoughton Trailers interviewed Willis and took him on two tours of the plant, the first while it was not in operation and the second when it was. Willis's sister-in-law accompanied him as an interpreter for the first interview and tour, and his brother for the second.

The purpose of the second interview and tour was to provide Willis with an opportunity to recommend accommodations that he believed would enable him to safely perform the duties of the assembler position. Stoughton Trailers considered the accommodations, but determined that, given the number and complexity of safety hazards and communication demands of the position and the work environment, there was no accommodation or combination of accommodations which would enable Willis to safely and effectively perform the duties of the assembler position.

After Stoughton Trailers notified Willis that he would not be offered the assembler position, Willis filed a complaint with the Equal Rights Division of the Department of Workforce Development. He alleged that Stoughton Trailers violated his rights under the WFEA when it refused to employ him and accommodate his disability.

The Equal Rights Division (“ERD”) concluded that Willis had proved that Stoughton Trailers had violated the WFEA by refusing to reasonably accommodate his disability and by refusing to hire or employ him because of his disability. Stoughton Trailers petitioned LIRC for review of the decision.

LIRC’s Decision & Implications for Employers

On September 4, 2009, LIRC reversed the decision of the ERD, stressing a number of legal propositions helpful for Wisconsin employers. First, LIRC made clear that the complainant, not the employer, bears the initial burden of proving that a reasonable accommodation exists and would be effective. As a result, before Stoughton Trailers would need to prove that accommodating Willis would impose an undue hardship, Willis had to first prove that a reasonable accommodation for his hearing impairment was actually available and would allow him to safely perform the assembler position. LIRC found that Willis failed to show that any of six proposed accommodations, or combination of the accommodations, would enable him to perform the job-related responsibilities of the assembler position. The record revealed that each of the accommodations proposed by Willis had significant limitations. In fact, Willis’s own expert testified that he was unable to assess whether any of the suggested accommodations would actually work. Setting favorable precedent for employers, LIRC emphasized that any doubts as to the workability of proposed accommodations was required to be resolved against the complainant, in this case, Willis.

LIRC went on to rule that Stoughton Trailers was also not required to consider any accommodations that were not requested by Willis or obvious during the hiring process. LIRC also specifically held that to accommodate an employee or applicant, an employer is not required to modify a position to such an extent that it effectively creates a new position. Additionally, reaffirming prior precedent, LIRC ruled that Stoughton Trailers was not obligated to offer Willis a light-duty or limited-duty position as an accommodation, like it did for injured workers, because Willis was not similarly situated to them.

In sum, LIRC's decision provides needed clarity with respect to the obligations of both employers and employees (or applicants) in determining whether disabled persons can be reasonably accommodated. A link to LIRC's decision is available here: <http://www.dwd.state.wi.us/lirc/erdecns/1138.htm>.

If you have any questions about the *Willis* case or how it might impact your duty to reasonably accommodate employees in your workplace, please contact Laura Lindner, who represented Stoughton Trailers before LIRC, or any of the attorneys at Lindner & Marsack, S.C. with whom you have worked.

With offices in Milwaukee and Chicago, Lindner & Marsack, S.C. has represented management exclusively in all facets of labor, employment, and employee benefits law since 1908. Call us at (414) 273-3910 or (312) 924-0265, or visit our website, www.lindner-marsack.com, to learn more about our firm and its experienced and innovative attorneys.