

“Insomnia” Insufficient Basis for ADA and FMLA Claims

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In this case, the attorney claimed that her employer’s denial of her reduced-work-schedule request constituted both an unlawful failure-to-accommodate under the Americans with Disabilities Act (ADA) and unlawful interference with her right to take leave under the Family and Medical Leave Act (FMLA).

In 2006, after consulting physicians, the attorney was told that she was suffering from fatigue, sleep deprivation and insomnia. After being cleared by her doctor to return to full duty employment without restrictions, she requested five-hour work days. The attorney’s supervisors denied her request, stating that it would not enable her to perform her full responsibilities. In January, 2007, she was terminated, and her employer cited serious performance problems. In September, 2008, she filed suit.

The district court found that the attorney had a sleep disorder, but that her doctor concluded that she did not have ‘significant impairment in things like focus, concentration, alertness, mood, [or] memory’ that would prevent her from working,” the court said. The district court held that she was not an “individual with a disability” under the ADA and that she did not present any evidence indicating that her employer’s legitimate, nondiscriminatory reasons for firing her were a pretext.

The U.S. Court of Appeals for the Fourth Circuit, in affirming the lower court’s granting of summary judgment in favor of the employer, rejected the employee’s claims that her inability to sleep for more than four hours per night constituted an ADA-protected disability and that the employer provided “shifting justifications” for firing her. The Appeals Court stated that even if the attorney’s insomnia did qualify as a serious health condition, she failed to give her supervisors adequate notice of her need for leave. Although the attorney had requested a reduced work schedule in November, asking that she work no more than eight hours a day including her commute, this would not be sufficient to alert the employer that FMLA leave was needed. The Court reasoned that she never requested leave in any form, failed to identify a serious health condition and that her doctors determined she had no medical need for leave.

Before an employer’s duty to provide leave, restoration rights, and other statutory benefits to employees under the FMLA is triggered, the employee must provide adequate and timely notice of the need for, duration, and the justification for covered leave. Sometimes an employer’s best defense in FMLA litigation is buried in the medical

certifications the employee's own health care provider offered to qualify for leave in the first place. In addition, whenever an employee or applicant requests an accommodation based on some alleged disability, it is important to evaluate the nature and extent of the alleged disability to make sure it triggers coverage under the ADA. Also, with regard to an employee's request for an accommodation under the ADA, it is essential that an employer engage in an "interactive process" with them. Considering the requested accommodation does not mean you have to agree to it, especially if you have good reason not to do so. However, if you fail to at least discuss it, the employee may very well accuse you of violating the ADA. This decision provides some useful guidance for employers in dealing with employee requests for accommodation as well as FMLA leave.

For more information read *Anderson v. Discovery Communication, LLC*, No. 11-2195 (4th Cir., Apr. 5, 2013).

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Topics

ADA, FMLA, Fourth Circuit Court Of Appeals