

Seventh Circuit Finds no ADA Liability for Employer not Involved in Decisionmaking

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Joyce Whitaker began working for Milwaukee County as a corrections officer in 2001. In 2005, she sustained a work-related back injury and subsequently was diagnosed with several related medical conditions. As a result, her physician imposed permanent work restrictions and limitations in a number of basic tasks, including sitting, standing and walking. After receiving the restrictions, the County transferred Whitaker to a new position to accommodate her disability.

In 2009, during Whitaker's employment, Wisconsin enacted a statute that directed the State's Department of Health Services ("DHS") to establish a unit to administer public assistance programs in Milwaukee County. The County previously administered these functions through the unit in which Whitaker worked. Following the transition to State management, Whitaker remained an employee of the County but worked in the DHS unit. She retained her County badge and membership in the union of County employees; she also was compensated and received benefits from the County. All of her supervisors, however, were employees of DHS, and they managed the day-to-day affairs of the office with no input from County officials. These supervisors also had the authority to hire, transfer, suspend, promote, and discharge County employees.

In August of 2010, Whitaker aggravated her existing back conditions and requested continuous FMLA leave from DHS personnel on several occasions. Upon the expiration of her leave and failure to return to work, Whitaker was terminated for "medical reasons." Prior to receiving her notice of termination, Whitaker filed a charge with the EEOC, naming both the County and DHS as employers. After receiving her right-to-sue notice, Whitaker brought suit against both entities in the District Court for the Eastern District of Wisconsin, alleging failure to accommodate and termination on the basis of her disability. DHS successfully moved for dismissal based on Eleventh Amendment immunity, and the County moved for summary judgment. The district court granted summary judgment for the County, finding that Whitaker's claims against it as a "joint employer" with DHS failed as a matter of law. Whitaker subsequently appealed to the United States Court of Appeals for the Seventh Circuit.

The Seventh Circuit affirmed the district court, [clarifying the two tests that exist for joint employer liability](#). First, if the two entities are so connected that they constitute a single entity, liability can arise as a “single employer.” Second, if the two entities are separate and distinct, the plaintiff must demonstrate the named entity had sufficient control over the terms and conditions of employment to constitute an employment relationship. Here, while the County paid Whitaker, control over personnel issues and the principal decisions at issue rested with DHS. More importantly, there was nothing in the record to suggest that the County participated in the alleged discriminatory conduct or failed to take corrective measures within its control. Therefore, as the only named party, the County did not have sufficient control over Whitaker to establish liability.

The court also clarified the familiar scope of the charge rule, which provides that one can only bring claims in court that were asserted in the administrative charge unless the claim is reasonably related to one of the charges and can be expected to develop from the administrative investigation. Whitaker alleged wrongful termination in her charge but did not identify a failure to accommodate claim. Therefore, her failure to accommodate claim was not subject to judicial determination.

This case, *Whitaker v. Milwaukee County, Wisconsin*, No. 13-3735 (7th Cir. November 25, 2014), clarifies two important and frequently raised issues in employment law. Employers should be aware of the tests used by the court in determining joint employer liability and must be mindful of the scope of an employee’s allegations when an administrative charge is filed.

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