

First Circuit Confirms Importance of Good Faith Interactive Process

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The First Circuit Court of Appeals has given us yet another case demonstrating the importance of not only engaging in the interactive process, but doing so in good faith.

In *Equal Employment Opportunity Commission v. Kohl's Department Stores, Inc.*, No. 14-1268 (1st Cir. December 19, 2014), the employee, Pamela Manning worked a fairly predictable schedule as a sales associate. Later, the store restructured its staffing system which led to Manning's scheduled hours becoming more unpredictable. She therefore informed her supervisor that she could not work erratic shifts because it aggravated her diabetes, and subsequently brought in a doctor's note to that effect, requesting a predictable day shift.

At that point, the supervisor consulted with management and human resources, and ultimately concluded that while they could not give her a consistently steady, nine-to-five schedule, they could work with her in terms of scheduling and breaks. They met with her to tell her this, and apparently dissatisfied with the response, Manning became upset and said she had to quit or else she would become gravely ill. She slammed the door and left. A supervisor followed her to calm her down and to ask her to reconsider her resignation to discuss other accommodations, but Manning refused. She then contacted the EEOC about filing a charge. About ten days later, the supervisor again contacted her and asked her to reconsider her resignation and to consider alternative accommodations, but ultimately, Manning did not, and her departure was treated as a voluntary resignation.

The EEOC filed suit on her behalf, alleging discrimination and constructive discharge in violation of the Americans with Disabilities Act. The district court granted the employer's motion for summary judgment and the employee appealed. The U.S. Court of Appeals for the First Circuit affirmed.

First, the Court found that Kohl's [acted in good faith by trying to engage in a continued interactive process](#) with Manning about her work schedule, and that the failure of Kohl's to provide her with her exact requested work schedule did not amount to bad faith. Manning's refusal to participate in further discussions regarding accommodations was, however, in bad faith. Second, on the constructive discharge claim, the Court found that Manning's decision to resign was "grossly premature" as it was based on nothing more than "her own worst-case-scenario assumption." A reasonable person in similar circumstances would not feel compelled to resign where the

employer was offering to discuss work arrangements with her. In other words, it was her choice to quit, and the circumstances did not compel her to.

This case shows that the importance of the interactive process when dealing with employees with disabilities. The good faith (or lack thereof) of the parties can ultimately change the outcome of the case, as it did here. Had the employee actively and in good faith participated in the process, the employer may not have been able to secure a summary judgment ruling in its favor. In the end, this serves as a reminder that employers should engage in a good faith, back-and-forth discussion as to the options available to an employee before any adverse employment action has to be made.

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