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Employment Law Alert

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Single Failure to Accommodate Costs Employer $200,000

A new decision from a California Court of Appeal serves as an important warning about the need to keep managers apprised of workplace accommodations for disabled employees. (*A.M. v. Albertsons, LLC*, 2009 Cal. App. LEXIS 1675.)

The case involved an employee identified only as A.M., who worked as a checker at an Albertsons grocery store in Fairfax (Marin County). As a result of cancer treatments, she had to drink large amounts of water and use the restroom frequently. Albertsons accommodated A.M. by allowing her to keep water at her checkstand and permitting her to take restroom breaks as often as needed.

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On the evening of February 11, 2005, a new manager was working at the store. A.M. was working at the checkstand, and the only other employee present was a courtesy clerk (bagger). The manager was unaware of A.M.'s disability or ongoing accommodation, and she failed to cover for A.M. at the checkstand despite A.M's repeated requests to use the restroom. A.M. couldn't control herself and urinated while standing at the checkstand. The incident traumatized her, causing posttraumatic stress disorder.

A.M. sued Albertsons under the California Fair Employment and Housing Act (FEHA) for failure to provide her with a reasonable accommodation. A jury awarded A.M. $200,000 in damages, and the trial court denied Albertsons' motion for nonsuit.

On appeal, Albertsons argued that the single failure to accommodate was trivial, viewed in the context of a pattern of successfully accommodating A.M.'s disability for many months. Upholding the verdict, the First District Court of Appeal stated:

> "In our view, to adopt this interpretation of a failure to accommodate would be inconsistent with the FEHA. The statute does not speak of a pattern of failure and Albertsons cites no case authority supporting its interpretation of the FEHA failure to accommodate statute requiring one…As is demonstrated by A.M.'s case, a single failure to make reasonable accommodation can have tragic consequences for an employee who is not accommodated."

The Court of Appeal also rejected Albertsons' argument that A.M. had a continuing duty, as part of the interactive process, to communicate and to tell the on-duty manager that she had been granted an accommodation. The court explained:

> "Acceptance of this argument would require us to blur the distinctions between these two different violations of the FEHA -- the failure to engage in a good faith interactive process to determine a reasonable accommodation for an employee's disability and the failure to provide a reasonable, agreed-upon accommodation."

This decision makes clear that a single failure to accommodate can amount to a violation of the FEHA. Thus, employers should ensure that managers are fully trained on their reasonable accommodation obligations. Furthermore, once a reasonable accommodation is granted, it is critical that the information gets communicated to managers who need to know about it.

For over a decade, Miller Law Group has devoted its practice exclusively to representing business in all aspects of California employment law and related litigation. If you have questions about these new developments or your workplace obligations, please contact Michele Ballard Miller (mbm@millerlawgroup.com) or Carolyn Rashby (cr@millerlawgroup.com), or call 415-464-4300.

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