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New Jersey Supreme Court holds that an employee's ability to perform essential job functions shapes the employer's duty of reasonable accommodation.

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New Jersey Supreme Court Clarifies that Essential Job Functions Shape the Duty of Reasonable Accommodation and Light Duty Need Not Be Made Permanent

By Keith J. Rosenblatt and Ebonee N. Hamilton Lewis

As many New Jersey employers know, the New Jersey Law Against Discrimination (LAD) imposes a nebulous "duty of reasonable accommodation" on employers with regard to their treatment of allegedly handicapped or disabled employees. Similar to that imposed under its federal counterpart, the Americans with Disabilities Act, this duty is highly fact-sensitive in its application, often rendering its parameters difficult to discern. On June 12, 2007, in *Raspa v. Office of the Sheriff of the County of Gloucester*, the New Jersey Supreme Court finally provided some much needed clarification on the scope and application of this duty.

In a rare and significant victory for employers, the Court held that the LAD does not prohibit employers from terminating disabled employees who cannot perform their essential job functions and that the duty of reasonable accommodation is not triggered unless an employee possesses the bona fide occupational qualifications of the job he holds or seeks. The Court also held that an employer may reasonably limit light duty assignments to employees with only temporary disabilities, and that the LAD does not require employers to create or assign employees to indefinite light duty positions. This is so even if the employer has already continued the employee in a light duty position for an extended time period.

Summary of the Facts

For over thirteen years, Michael J. Raspa, Jr. had been employed without incident as a corrections officer in the Gloucester County Jail. In October 1997, however, he was diagnosed with Graves' disease, a hyperactive thyroid condition. As a result of

his treatments for the disease, Raspa developed a second condition that caused bulging eyes and possible double vision, which was expected to worsen with continued treatments. Consequently, in February 1999, his physician issued a doctor's note requesting he not supervise inmates. Although a corrections officer's responsibilities (including escorting, restraining and searching inmates) require close inmate contact, the Sheriff's Office complied with this request. Raspa was placed on restricted duty status and reassigned to several light duty positions requiring no contact with inmates. He continued in this light duty status until 2002, despite the Sheriff's issuance in June 1999 of a policy limiting to thirty days the light duty assignments of those whose disabilities did not stem from an on-the-job injury.

In January 2002, the Sheriff's Office requested an updated doctor's note from Raspa's physician, who responded with a note stating that Raspa should have minimum to no contact with prison inmates because of the risk of injury to his eyes. The Sheriff's Office's physician disagreed and cleared Raspa for unrestricted duty. In response to these notes, and out of concern for Raspa's safety, the Sheriff's Office requested that he be placed on disability retirement. The next day, Raspa's physician issued yet another note, this time stating that Raspa needed only limited inmate contact and requesting that his light duty be continued.

The Sheriff's Office refused to continue Raspa's light duty assignments and proceeded with the involuntary application for disability retirement. Rather than participate in the application process for retirement disability

benefits, Raspa filed suit against the Sheriff's Office, alleging that it had violated its duty to reasonably accommodate his disability under the LAD by not permanently assigning him to the light duty positions involving limited inmate contact. A jury agreed, and the court awarded him \$273,000, plus costs and attorneys' fees.

On appeal, the Appellate Division affirmed the judgment in all respects, rejecting the Sheriff's Office's position that the law did not require it to transform its temporary light duty jobs into permanent positions, and that because Raspa was unable to perform the essential functions of his position, it had no duty to reasonably accommodate him. The New Jersey Supreme Court, however, agreed with the Sheriff's Office and directed that judgment be entered in its favor.

The New Jersey Supreme Court's Decision

In reversing both the trial and appellate courts, the Supreme Court acknowledged the LAD's broad reach but focused on the limits of its protections. Noting that the LAD forbids "any unlawful discrimination against any [disabled] person," the Court also took heed of the statute's caveat that this applies only where "the nature and extent of the disability [does not] reasonably preclude[] the performance of the particular employment." In fact, the Court explained, the LAD explicitly acknowledges this limitation by providing that its protections should not be construed "to prohibit the establishment and maintenance of bona fide occupational qualifications." Thus, when an employer reasonably concludes that an employee cannot perform the job, either because he is unqualified or because his handicap impedes job performance, it may fire or refuse to hire him without fear of liability under the statute. Under this analysis, the threshold issue of law becomes whether the employee's disability reasonably precludes the performance of his particular employment.

Turning to this question, the Court examined Raspa's job description to determine whether his disability precluded the performance of his essential job duties. After finding that having contact with inmates was an essential job function, that Raspa was unable to perform any duty that involved such contact, and that

there was therefore no reasonable accommodation that would allow him to perform such duties, the Court concluded that his disability rendered him unqualified for the job as a matter of law. Therefore, the Sheriff's Office acted lawfully in terminating his employment.

The Court also rejected Raspa's argument that because he was assigned to light duty for three years, the Sheriff's Office should have maintained his light duty status indefinitely. In doing so, the Court emphasized that light duty positions are used to provide disabled employees with "a temporary way station or bridge between an inability to work due to injury and a return to full employment status," rather than a "sword by which a person who is otherwise unqualified for the position can demand a permanent posting." Based upon this analysis, the Court held that under the LAD, an employer need not transform temporary light duty assignments into permanent positions and may limit such assignments to employees with non-permanent disabilities.

Import of the Court's Ruling

Raspa is a welcome reaffirmance of an employer's right to hold all employees to their job qualification and performance standards and to restrict its offering of light duty assignments to those who are most likely to return to work in the foreseeable future. It also underscores the importance and utility of detailed written job descriptions. Indeed, the Supreme Court's reliance on the specifics of Raspa's written job description provides a strong incentive for employers to prepare and maintain clear and accurate descriptions that specify the essential functions of the job. As this decision demonstrates, a well-defined job description may dictate when, if at all, the duty of reasonable accommodation is triggered and will go a long way towards defining the scope of that accommodation.

This decision also benefits employees. With regard to the Sheriff's Office's efforts to retain Raspa as long as it did through the use of temporary light duty assignments (despite its policy to the contrary), the Court "lauded" those and similar efforts, noting that "nothing in this opinion should be read to discourage them or to permit them to be turned against an employer." By reassuring employers that they will not be punished for their good deeds in

extending accommodations that they are not otherwise obligated to provide, the Court has effectively encouraged employers to provide them. Thus, both employers and employees have something to gain from this decision.

Keith J. Rosenblatt is a Shareholder and Eboneé N. Hamilton Lewis is an Associate in Littler's Newark offices. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, Mr. Rosenblatt at krosenblatt@littler.com, or Ms. Lewis at enlewis@littler.com.
