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10th Circ. Ruling Is Cogent Reminder Of Employer ADA Duties

By **Linda Dwoskin** (October 3, 2019, 5:27 PM EDT)


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It has long been understood that no magic words are necessary for an employee to communicate the need for reasonable accommodation under the Americans with Disabilities Act. Unfortunately, employers continue to make mistakes when employees request changes to the manner or method in which their jobs are performed, but do not specifically request an accommodation.

The most recent example of an employer that got it wrong is the employer in the U.S. Court of Appeals for the Tenth Circuit case of Mestas v. Town of Evansville,[1] discussed below.

As this case demonstrates, employers must understand and appreciate when an employee's statements constitute requests for accommodation, even if not phrased quite that way. This article discusses how to recognize a request for accommodation, and even more importantly, how to handle these requests. Doing so will go a long way in ensuring ADA compliance and mitigating legal risk.

According to court documents, Roy Mestas was a sanitation truck driver in the city's Public Works Department who began his position in September 2012. In November 2012, during his probationary period, he slipped on ice and injured his back, necessitating a medical leave. Mestas returned to work without restriction in January 2013, but according to Mestas, his supervisor treated him more harshly after his return.

He also alleged that the supervisor made multiple derogatory comments about Hispanic employees. Mestas reinjured his back in early April 2013 but did not tell his supervisor nor complete any documentation about any specific injury. Instead, over the course of a week, Mestas made the following requests: On April 11, Mestas told his supervisor that he had scheduled a day off for a steroid injection to relieve his back pain; on April 15, during snow removal activity, Mestas asked his supervisor if he could use his own snowblower because of his back pain (the supervisor denied the request); and on April 16, Mestas called into work and asked to be excused from shoveling snow because he had reinjured his back.

When Mestas reported to work on April 17, the supervisor terminated his employment telling Mestas to "take care of [his] back and whatever." The whatever turned out to be Mestas' lawsuit alleging retaliation under the ADA, among other things. The district court granted summary judgement in favor of the town of Evansville on this claim, but the Tenth Circuit reversed.

In order to prove ADA retaliation, Mestas had to prove that he made requests for reasonable accommodation, that these requests were sufficiently direct and specific to put the employer on notice of the need for accommodation, and that Mestas suffered an adverse employment action because of those requests. The court of appeals concluded that Mestas clearly made such requests, reiterating the oft-repeated expression that an employee need not use magic words or reference the ADA or reasonable accommodation.

According to the court, an employee "must only make clear that 'the employee wants assistance for his or her disability.'"[2] In other words, to constitute a request for accommodation, there must be both a request for assistance and a link to the underlying disabling condition. The Tenth Circuit easily found both in this case — Mestas requested long-term leave from November 2012 through January 2013, he requested a day off in April for a steroid injection, he requested use of his own snowblower, and to be excused from shoveling.

Each of these requests was expressly linked to a back injury or back pain. The final request was followed one day later by his employment termination.

In addition, the court clarified that Mestas did not need to be actually disabled to assert an ADA retaliation claim. It was enough that he had a reasonable, good faith belief that he suffered from a disability and had requested accommodation under the law.

The Tenth Circuit's opinion, while not particularly surprising, provides a cogent reminder of employer ADA obligations. These are set out below.

Recognize when requests for assistance are actually requests for accommodation.

Supervisors and managers must understand that when there is a request for assistance and it is linked in some way to the existence of a medical condition, the ADA may be at issue. This does not mean that managers and supervisors need to be mind readers. Nor does it mean that every request for assistance should be presumed to be based on a disability.

Rather, the supervisor or manager needs to understand that there are compliance obligations, and must pay close attention to the nature and reason for a request so that the request can be handled appropriately.

Engage in the interactive process.

Once on notice of the need for accommodation, the employer must engage in the interactive process. This means engaging in a dialogue with employees regarding their needs, with the goal of understanding the issues and devising solutions. This is good management practice, regardless of the presence of a disability.

The process does not mandate that any particular accommodation be granted, that the employer spend significant sums of money, nor that the employer always do exactly what the employee wants. Rather, it means actively listening and acting in good faith to do what is reasonable to enable the employee to perform the job's essential functions. There are many resources available to employers to assist with finding creative solutions to accommodation challenges.

Document discussions and decision.

When an employee makes a request, albeit with or without the word accommodation, document that request as well as all efforts made in response. Any employer that makes an effort to accommodate an employee, even if not providing the precise accommodation favored by the employee, will do far better in any litigation.

Review and update policies.

Employers should review and update their reasonable accommodation policies, explaining the procedure by which employees should make accommodation requests.

Train supervisors and managers.

The ADA is a complicated statute and even seasoned human resources professionals sometimes get it wrong. It is imperative that first-line supervisors and managers, who are the first to receive notice of a need for accommodation, understand the full breadth of an employer's obligations. Training is the least expensive form of litigation avoidance.

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[1] Mestas v. Town of Evansville, Wyoming, No. 17-8092, 2019 WL 4233198 (10th Cir. Sept. 6, 2019).

[2] Id.