

Offer to grant leave deemed reasonable request for employee

Employee not entitled to exact set of accommodations she desires

By A. Michael Weber, Esq.

Starwood Hotels & Resorts Worldwide, Inc., acted lawfully by offering a disabled employee the option to take leave as a reasonable accommodation to health issues that prevented her from working double and overnight shifts. *Kelly v. Starwood Hotels & Resorts Worldwide, Inc.*, No. 15cv6309 (DLC), 2017 WL 1133433 (S.D.N.Y. 03/24/2017). That was the holding of District Judge Denise Cote in her recent decision granting summary judgment to Starwood on disability discrimination claims arising under the Americans with Disabilities Act and the New York City Human Rights Law.

Patricia Kelly, an employee at the Westin New York at Times Square, informed her employer in late 2014 that she suffered from a number of chronic health conditions, including hypertension, hyperthyroidism, osteoarthritis, chronic elbow pain, and cardiac arrhythmia. She claimed that her doctor said her health conditions would preclude her from working shifts lasting longer than seven hours, or starting after 8:00 p.m. She asked that she not be assigned to any such shifts.

In early 2015, Starwood denied the accommodation request, stating that it would violate the seniority system set forth in the collective bargaining agreement. Instead, Starwood offered to allow Kelly to take Family and Medical Leave Act leave whenever she was scheduled to work an overnight shift.

One year later, Starwood supplemented the accommodation by:

- (1) Ensuring that Kelly would not be scheduled for double shifts;
- (2) Posting a sign-up sheet for other workers to cover her shift when she is scheduled to work overnight; and
- (3) Allowing her to use paid time off credits or FMLA time if no one is available to pick up her shifts, with no disciplinary repercussions.

Because of these arrangements, Kelly never had to work either a double or overnight shift.

Nevertheless, the Kelly filed a complaint alleging that Starwood failed to accommodate her disabilities in violation of the ADA and New York disability laws. Starwood moved for summary judgment, which a district court granted.

The court found that Starwood offered measures to accommodate the disability, and that the measures taken were plainly reasonable.

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Citing the fact that Kelly never worked a double or overnight shift, the court deemed the hotel's accommodations as "plainly reasonable." The court noted that Kelly was not excluded from the essential functions of her job, or any of the benefits or privileges arising from her employment.

Although Kelly argued that the hotel should also refrain from assigning her to overnight shifts at all — and offer to pay overtime to other employees who agree to pick up one of her assigned shifts — the court rejected this argument, holding that "having offered a plainly reasonable set of accommodations ... Starwood is not required to do more."

The court extended this same rationale to the New York City law claims, which require a more stringent standard than the federal counterpart.

Leave as a reasonable accommodation

A reasonable accommodation is, generally, "any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities." According to the Equal Employment Opportunity Commission, that can include making modifications to existing leave policies and providing leave when needed for a disability, even if the employer does not offer leave to other workers.

Leave may be considered a reasonable accommodation if it enables an employee to return to work following the period of leave. However, reasonable accommodation does not require an employer to provide paid leave beyond what it provides as part of its paid leave policy to all similarly-situated employees.

In the event that an employee requests leave as an accommodation, the employer has the right to obtain information from the employee's health care provider — with the employee's permission — to ask an employee's health care provider to respond to questions to enable the employer to understand the need for leave, the amount and type of leave required, and whether the accommodations will be effective for the employee.

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