Third Circuit Provides Guidance on When a Request for a Religious Accommodation Can Be Denied

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For employers, denying an employee's request for a religious accommodation can seem daunting. Stories of costly, drawn-out lawsuits, that resulted in a jury finding for the employee, have caused many employers capitulating to their employees' requests, regardless of its reasonableness. Fortunately, the United States Third Circuit Court of Appeal's recent decision in *Miller v. Port Auth.[i]* reminds employers they can prevail on failure to accommodate lawsuits if they follow the proper procedure and provide their employees with reasonable alternative accommodations.

Background

Gary Miller worked for the Port Authority of New York and New Jersey as a mechanic at Newark Airport. He followed the Jewish faith, which prevented him from working from sunset on Friday through sunset on Saturday. As an airport mechanic, Miller was part of a 14-person union, labeled the Mechanical Maintenance Unit. Employees in this union were responsible for the operation, maintenance, and repair of utility systems and related equipment at the airport.

Due to the nature of the airport and the importance of this position, mechanics had to be on duty all hours of the week. As part of negotiations, the union and the Port Authority agreed to a 24/7 work schedule to accommodate this requirement. Notably, the four most senior mechanics worked Monday to Friday from 7:00 AM to 3:00 PM. The remaining ten mechanics rotated between these three shifts:

"A" Shift: Seven consecutive workdays from 11:00 PM to 7:00 AM, followed by two days off.

"B" Shift: Six consecutive workdays from 7:00 AM to 3:00 PM, followed by three days off.

"C" Shift: Seven consecutive workdays from 3:00 PM to 11:00 PM, followed by two days off.

Since the shifts were negotiated, the Port Authority could not unilaterally change the work schedules. Of particular importance, the parties also negotiated that the mechanics received personal days and vacation days, and that the mechanics could voluntarily swap working days or shifts.

As the least senior employee, Miller was part of the three-shift rotation. Unfortunately, certain shifts required that Miller works on Friday evenings or Saturdays. He, therefore, requested a religious accommodation that would allow him to leave work four hours before sunset on Fridays and not commence work any sooner than two hours after sunset on Saturdays. In

practice, this meant he would not work the "B" or "C" shifts on Fridays, and none of the three shifts on Saturdays. Since the Port Authority could not unilaterally modify the shift schedule, it would have to pay other employees overtime to meet this request.

Upon receiving this request, the department manager discussed this accommodation request with the department supervisor, the employee's direct supervisor, the Port Authority's Office of Equal Employment Opportunity, the Human Resources Department, and the Law Departments. Upon consultation with these departments, it was determined that the request should be denied because: (1) the position provided critical functions at the airport that required continuous coverage; (2) there were significant restraints placed on what the Port Authority could offer based on the collective bargaining agreement; (3) the overtime costs in accommodating the request; and (4) the effect on employee morale if other mechanics were required to work additional weekend shifts.

Following the accommodation being denied, Miller used his personal days when his shift fell on Friday evening or Saturday. However, once he ran out of personal days, Miller did not show up for his shift and refused to use his vacation days. As a result of his failure to show up for his shift, the Port Authority had to pay overtime to another mechanic to cover the shift. This occurred on four more occasions, in which Miller did not use vacation days, nor did he utilize the option of mutual swaps to cover his shifts. Based on his excessive unexcused absences, the Port Authority terminated Miller. Miller sued the Port Authority for failure to provide a reasonable accommodation.

Court's Decision

The Court ruled for the Port Authority, finding it offered Miller a reasonable accommodation. The Court noted that a sufficient reasonable accommodation need not be the "most" reasonable accommodation (in the employee's view), the accommodation that the employee suggests or prefers, or the one that least burdens the employee. Instead, the accommodation must only be "reasonable." Here, the Third Circuit determined that the employee's accommodation package -- that included use of vacation days, the use of personal days, and the ability to voluntarily swap shifts with other mechanics -- was a reasonable accommodation.

Takeaways

This case epitomizes the significance of following the appropriate steps when considering an employee's accommodation request. Of particular importance, the Court found these factors important in ruling in the employer's favor:

1. *Spend Time Determining the Impact of the Request:* Before denying the request, the department manager consulted with a vast array of individuals/departments to determine the request's impact. Specifically, the department manager spoke with: (1) the department's supervisor, (2) employee's direct supervisor, (3) the Port Authority's Office of Equal Employment Opportunity, (4) the Human Resources Department, and (5) the Law Departments. This process demonstrated to the Court that the accommodation request was taken seriously, fully considered, and its impact properly examined.

2. *Provide Several Reasons for Denying the Accommodation:* Courts traditionally are exceedingly reluctant to find a request unreasonable when the sole reason given is the monetary impact on the employer. Instead, employers are far more likely to prevail against a failure to accommodate claim when several justifications are provided, which include several non-monetary reasons. Here, the Port Authority provided one monetary reason (granting the request would cause greater overtime costs), along with several non-monetary reasons (which included the constraints imposed by the collective bargaining agreement and the effect on employee morale in forcing employees to take on additional weekend shifts).

3. *Provide an Accommodation Package:* Employers are not limited to countering an employee's request with a single accommodation. Instead, employers can provide employees with a package of accommodations or alternative

accommodations. In this case, the Port Authority offered to accommodate Miller's request by allowing him to use vacation days, personal days, or to find another mechanic who would voluntarily swap shifts. The Court made clear that despite Miller wanting to challenge the Port Authority's "accommodations in isolation, we need not decide whether each accommodation was reasonable in isolation because they were all offered as part of the Port Authority's attempt to accommodate Miller's religious practices." While each accommodation taken individually may have failed the reasonableness standard, taken together the Court found that the Port Authority fulfilled its legal obligation in offering a reasonable accommodation.

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[i]Miller v. Port Auth. of New York & New Jersey, No. 18-3710, 2019 WL 5095749 (3d Cir. Oct. 11, 2019)