The Work Week

Bassford Remele Employment Practice Group

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Welcome to another edition of *The Work Week with Bassford Remele.* Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Canine Colleagues: Are Service Dogs a Reasonable Accommodation?

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In recent years, employers have explored allowing dogs in the office, citing benefits like stress reduction, improved morale, and increased productivity. The growing trend raises important questions regarding dogs in the workplace as a reasonable accommodation under laws like the Americans with Disabilities Act ("ADA") and the Minnesota Human Rights Act ("MHRA"). The Eighth Circuit Court of Appeals recently addressed this issue on two separate occasions. Today, we'll cover *Hopman v. Union Pacific Railroad* and *Howard v. City of Sedalia* and discuss the implications for employers faced with similar situations.

ADA and MHRA Refresher

The ADA and MHRA prohibit employers from discriminating against a qualified individual on the basis of their disability. Failing to make a reasonable accommodation for the known physical or mental limitations of an otherwise qualified individual is discrimination under the ADA and MHRA. A "qualified individual" is defined as "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8), *see also* Minn. Stat. § 363A.03, subd. 36 (in employment, a "qualified disabled person" is defined as "a disabled person who, with reasonable accommodation, can perform the essential functions required of all applicants for the job in question").

Hopman v. Union Pacific Railroad

After the plaintiff-employee had worked for the defendant-employer for a period of time, he obtained a service dog to ameliorate the effects of his service-related PTSD and migraines. His employer refused to allow him to bring his service dog on the train while Hopman was engaged in his job duties, initially as a conductor, and subsequently, as an engineer. After a jury found in favor of the plaintiff-employee, the district court granted the defendant-employer's motion for judgment notwithstanding the verdict, holding that there was no legally sufficient evidentiary basis for the jury's verdict.

Howard v. City of Sedalia

The plaintiff-employee, a pharmacist, suffered from diabetes and hypoglycemic unawareness (an inability to know when one's blood sugars are too low). After working for a period of time, the plaintiff-employee obtained a diabetic-alert service dog and requested to have the service dog by her side during its training period. Once the dog was trained, she would not need to bring it to work. After the employer-defendant denied her request, she filed a lawsuit alleging the dog would have allowed her to perform the essential functions of her job. A jury found in favor of the employee-plaintiff and the district court denied the employer-defendant's motion for judgment notwithstanding the verdict.

Eighth Circuit's Analysis

The crux of the Court's decision in both cases was the ADA's intended scope under a reasonable-accommodation claim relating to the benefits and privileges of employment. To establish the claim, the denied accommodation must negatively impact an employer-sponsored or employer-provided benefit or privilege that is available to others who are similarly situated without disabilities. Put differently, the requested accommodation and subsequent denial must directly affect the individual's ability to perform the essential functions of their job.

In *Hopman*, the Court affirmed the trial court, noting that the plaintiff-employee limited his failure-to-accommodate claim to the benefits and privileges of employment. Agreeing with the district court's decision, the Court rejected the plaintiff-employee's argument that freedom from the mental or psychological pain caused by PTSD (or any disability for that matter) is a benefit or privilege of employment under the ADA. The Court noted that the argument that an accommodation may improve job performance is a distinct and separate theory which the plaintiff-employee did not plead. The Eighth Circuit, like the district court, also rejected the argument that an employee should not have to endure physical or emotional pain while at work. The Court reasoned that neither better job performance nor reducing pain are benefits or privileges of employment.

In *Howard*, citing to its decision in *Hopman*, the Court rejected the same argument raised in *Hopman* – that the diabetic alert dog (the accommodation) would allow the plaintiff-employee to perform her job at an optimal level. The court held that there was no evidence that the plaintiff-employee was denied access to a benefit or privilege of her employment and observed that she had successfully performed her job before obtaining her service dog.

In summary, *Hopman* and *Howard* indicate that an employer faced with a request to allow a service dog may not need to grant the request if the service dog merely assists with daily activities, particularly where the employee has successfully performed the essential functions of their job without the service dog. While *Hopman* and *Howard* involved service dogs, the Court's holdings and reasoning could be interpreted to extend to other non-service animal accommodation requests.

At Bassford Remele, we constantly monitor case law and legislative updates to keep our clients apprised of new developments in employment law. Please feel free to reach out to our team with any questions!

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