Employment Update

Lessons for Avoiding ADA Failure-to-Accommodate and Retaliation Claims from a New Decision by Magistrate Judge Little of the Northern District of Oklahoma

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January 6, 2025

On December 20, 2024, Magistrate Judge Christine Little (of Tulsa) denied Jenks Public Schools' motion to dismiss an American with Disabilities Act (ADA) failure-to-accommodate claim and an ADA retaliation claim of a former teacher. Here are six important lessons for HR and employment lawyers from *Wood v. Independent Sch. Dist. No. 5*, 2024 WL 5191292 (N.D. Okla. Dec. 20, 2024).

The Facts
Angela Wood taught at Jenks for nearly 20 years and received good reviews. In 2011, Jenks named her the Eighth Grade Team Leader. In 2018, it named her the Key Club Team Leader. But things changed when she went deaf in one ear, and she had significant hearing loss in the other ear. Wood tried to compensate by learning to lip-read, but the deafness impaired her ability to communicate with students in class.

During the pandemic in 2020, Jenks held in-person classes, virtual classes, and hybrid options. Wood asked for a virtual class as an accommodation for her hearing. But Jenks denied it, claiming there wasn't a vacancy for which she was qualified, though it did grant her a hearing device. Between April 2021 and May 2022, she inquired about and applied for vacancies to accommodate her hearing. During an evaluation in April 2022, she asked again, but her requests were ignored, and she was never invited to interview for open positions for which she was qualified.

In May 2022, Wood emailed the superintendent and HR, complaining about the two years of inaction. In June 2022, the Principal removed Wood as the Eighth Grade Team Leader. Though he restored her position after she complained, he removed her role again in October 2022, causing her to lose the extra pay that came with being the Eighth Grade Team Leader.

Wood then met with district leaders in October 2022 to discuss her need for an accommodation and the retaliation by the Principal. In a follow-up meeting, the Principal "was angry and verbally attacked" Wood for "complaining to School District leaders about" him. She explained again "why her hearing loss necessitated a job accommodation" and her struggles with anxiety and depression.

Jenks requested medical documentation, but didn't follow up with Wood about an accommodation. So, in February 2023, Wood emailed HR about her options. After waiting a month with no response, she filed a charge with the Equal Employment Opportunity Commission (EEOC) and resigned at the end of the school year. She sued Jenks for violating the ADA, and Jenks moved to dismiss her claims.

Lesson 1—the 300-day deadline to file a charge starts when you know of the unlawful practice.
Jenks attacked the timeliness of Wood's failure-to-accommodate claim on two grounds. The first ground, Jenks argued that she didn't file with the EEOC within 300 days of her *request for accommodation*. But to be timely, a charge must be filed within 300 days "after the alleged *unlawful employment practice* occurred." 42 U.S.C. § 2000e-5(e)(1) (emphasis added); 42 U.S.C. § 12117(a). An employee's request for

accommodation is legally protected activity, but it's not an "unlawful employment practice" that triggers the 300-day filing deadline. Magistrate Little pointed out that the Tenth Circuit has held that "it is *knowledge of the adverse employment decision itself* that triggers the running of the statute of limitations." *Davidson v. Am. Online, Inc.*, 337 F.3d 1179, 1187 (10th Cir. 2003).

Lesson 2—a Plaintiff can rely on and recover for continuing violations outside the 300-day window.
The second ground, Jenks argued Wood's claim was untimely because the alleged failures to accommodate that were outside the 300-day window were not part of a continuing violation. A plaintiff can recover for discriminatory acts outside the 300-day window if they are part of a continuing policy or practice that includes the act or acts within the 300-day window, because each discrete discriminatory act starts a new 300-day clock. Since Wood met with leaders about her accommodation requests in October 2022 through February 2023, her charge was timely filed in late Spring 2023 because it was within 300 days of Jenks' most recent inaction (*i.e.*, failure to accommodate). Her requests going back to 2020 were part of a continuing violation for which Wood may be able to recover on her claim.

Lesson 3—an employee can file a failure-to-accommodate claim even if not terminated.
Jenks also argued it could not be held liable on the failure-to-accommodate claim because Wood resigned, and Jenks never fired her. But "an adverse employment action is not a requisite element of an ADA failure-to-accommodate claim." *Exby-Stolley v. Board of Cnty. Comm'rs*, 979 F.3d 784, 788 (10th Cir. 2020). Instead, an employer can be liable if it knew of the request but failed to grant a reasonable accommodation. Since Jenks knew Wood had asked for an accommodation but failed to grant one, Wood could bring a failure-to-accommodate claim even though she resigned.

Lesson 4—prompt, considerate communication can avert litigation or strengthen your defense.
If Wood's allegations are true—which Magistrate Little had to assume for purposes of addressing Jenks' motion to dismiss—then there are clear lessons for HR. Don't delay addressing accommodation requests. Wood lodged numerous allegations of repeated delay and inaction from 2020 through 2023. Be prompt. Be genuine. Show sincere care and concern. Make sure the employee is fully informed about your efforts to explore possible accommodations. And make sure the employee understands the reasons why accommodations may or may not be possible or reasonable. Good, timely communication and genuine care can often avert costly litigation. And even if you are still sued, it will be great evidence that you did not discriminate and that there was not a reasonable accommodation.

Lesson 5—an employer may be liable for retaliation even if it doesn't fire an employee.
Lastly, Jenks sought dismissal of the retaliation claim on two grounds. It first argued Wood suffered no material adverse employment action (the second essential element of a viable retaliation claim) because she resigned. But a material adverse employment action is not limited to being fired. Any action taken by an employer can be materially adverse if it "might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Burlington N. and Santa Fe R.R. Co. v. White*, 548 U.S. 53, 68 (2006). Magistrate Little found that Wood's removal from the Team Lead role in October 2022—an extra duty job she had held for over a decade—which resulted in a loss of pay and caused her to suffer humiliation, was an action that a reasonable worker could find materially adverse. When an employee has engaged in legally protected activity (the first element of a retaliation claim), such as requesting an accommodation, HR must take care to be alert to actions short of termination that could be viewed as materially adverse.

Lesson 6—Navigate the interactive accommodation process with patience and genuine care.
The second ground that Jenks lodged for dismissing the retaliation claim was that Wood failed to allege facts plausibly showing a causal connection (the third element of a retaliation claims) between her requests for accommodation (element one) and the adverse actions taken by Jenks (element two). But Magistrate Little found that Wood sufficiently alleged that the Principal stripped her of the Eighth Grade Team Lead role one week before a meeting where she raised her accommodation requests, and during a meeting days later, the Principal berated her for complaining about him. Magistrate Little noted that the Principal's actions were in close temporal proximity to the accommodation discussion, plausibly connecting her removal from the Team Lead role (the adverse action) with her requests for accommodation (the protected activity).

In my experience advising employers over the last 30 years since the ADA's passage, too often managers get impatient with the ADA's interactive job accommodation process. That's a huge mistake, because patience with the process will lead to your protection. When managing and navigating the interactive process, managers must always exercise great care to maintain a patient, genuine attitude of reasonably striving to help an employee find a reasonable accommodation that will enable them to remain successfully employed. There is *no place* for impatience or manifesting negative attitudes or actions. As shown in Wood's case, negative behaviors will be used against an employer in an effort to show discriminatory or retaliatory animus.

GableGotwals' Employment & Labor Practice Group is well-equipped to assist employers in navigating the complexities of the ADA.

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