

## DISTRICT COURT WRONGFULLY DISMISSED ADA CLAIM OF NURSE WHO REFUSED VACCINATION

In *Ruggiero v. Mount Nittany Medical Center*, 2018 WL 2684051 (3d Cir. 2018), the United States Court of Appeals for the Third Circuit reversed dismissal of an ADA claim of a registered nurse who refused to receive a Tdap vaccination.

### Key Facts

- • Aleka Ruggiero (Ruggiero) was a registered nurse at the Mount Nittany Medical Center (MNMC).
- • Ruggiero has impairments including severe anxiety and eosinophilic esophagitis, a chronic immune system disease.
- • In April 2015, MNMC instituted a new requirement that all clinical employees receive a Tdap (tetanus, diphtheria, and pertussis) vaccine.
- • On June 2, 2015, Ruggiero’s physician, Dr. Suzanne Dib, delivered to MNMC a note stating that Ruggiero “is medically exempt from receiving tdap immunization for medical concerns.”
- • MNMC’s employee health coordinator, Emma Smith, responded by providing Dr. Dib with a letter listing two contraindications identified by the Tdap vaccine manufacturer (hypersensitivity (anaphylaxis) and encephalopathy) and six vaccine warnings/precautions. Smith asked Dr. Dib to identify the medical contraindication which prohibited Ruggiero from receiving the vaccination.
- • Dr. Dib provided a letter stating:

Aleka Ruggiero is medically exempt from receiving the Tdap immunization due to severe anxiety with some side effects she read with this injection, especially with her history of having many food allergies, environmental allergy and eosinophilic esophagitis. Patient being terrified, I feel the risk of this Tdap injection outweighs the benefits. [Plaintiff] understands the risks of not getting this immunization.
- • At some point Ruggiero also suggested that she be allowed to wear a mask as an alternative to receiving the Tdap vaccine.
  - MNMC permitted nurses who declined an influenza vaccine to wear masks.
- • Thereafter, Smith issued a letter stating:

[T]he documentation provided by Dr. Dib does not meet the definition of medical contraindication as detailed in the manufacturer’s vaccine literature and thus Tdap immunization is required.

- • Subsequently, MNMC terminated Ruggiero because she refused to take the Tdap vaccine.

Ruggiero sued MNMC under the ADA. The lower court dismissed Ruggiero's reasonable accommodation claim on two grounds: (1) Ruggiero had failed to plead notice; and (2) the allegations demonstrated that MNMC had satisfied its obligations under the interactive process as a matter of law. The district court further concluded that Ruggiero had failed adequately to allege ADA discrimination and retaliation. Ruggiero appealed to the Third Circuit.

**NOTE:**

**The district court reasoned: (1) that Ruggiero failed to plead that MNMC was aware that she was disabled within the meaning of the ADA because she did not allege that MNMC knew she had a substantial limitation from a diagnosed impairment (that is, that simply informing an employer of a particular condition is not tantamount to providing the employer with knowledge that the employee is substantially limited in some major life activity); (2) that Ruggiero failed to allege that she requested an accommodation; (3) that MNMC made a good faith effort to engage in an interactive process with Ruggiero; (4) that by requiring the employer to engage in an interactive process, courts do not hold that any particular accommodation must be made by the employer and therefore MNMC was not required to grant Ruggiero's request that she be allowed to wear a mask; and (5) that Ruggiero's requested accommodation was for a "purely personal preference" which the ADA does not require an employer to grant.**

**NOTE:**

**Accommodation requests based on "personal preference," rather than on limitations caused by a disability, require no accommodation. *Grant v. Revera Inc./Revera Health Systems, 2014 WL 7341198 (D.N.J. 2014)*; *Prewitt v. Walgreens Co., 2012 WL 4364660 (E.D. Pa. 2012)* (where the plaintiff alleged that, given her cardiac disease, administering vaccinations would "create undue stress and cause significant illness," the accommodation request was based on "personal preference" and was insufficient under Rule 12 to show a disability requiring accommodation).**

**Reasonable Accommodation**

The Third Circuit started its analysis by setting forth the following general principles relating to the interactive process:

- • Discrimination under the ADA encompasses not only adverse actions motivated by prejudice and fear of disabilities, but also includes failing to make reasonable accommodations for a plaintiff's disabilities.
- • To determine the appropriate reasonable accommodation, it may be necessary for the employer to initiate an informal, interactive process with the employee.
- • Initiating such a process, however, requires that the employer first be put on notice of a disability and request for accommodation.
- • Under the ADA, adequate notice simply requires that an employee provide the employer with enough information that, under the circumstances, the employer can be fairly said to know of both the disability and desire for an accommodation.

- • Once notice is provided, each party thereafter assumes certain duties during the interactive process.
- • An employer can show its good faith in such ways as: meeting with the employee; requesting information about the employee's condition and limitations; asking the employee what accommodation she wants; showing some sign of having considered her request; and offering and discussing available alternatives when the request is too burdensome.

Applying the foregoing to the pleading in this case, the Third Circuit held that Ruggiero's complaint satisfied the pleading standards for establishing a claim under the ADA.

#### Notice

As to the lower court's holding that Ruggiero failed to allege that MNMC was on notice of her being disabled, the Third Circuit reasoned as follows:

[T]he facts alleged in the complaint plausibly suggest that MNMC knew of Ruggiero's alleged disability and her desire for an accommodation. Ruggiero alleged that she made an appointment with her doctor to discuss the required vaccine, and her doctor recommended not receiving the vaccine because of her medical conditions. She also alleged that her doctor memorialized her recommendation in two notes that were provided to MNMC. In addition to her request for an exemption, Ruggiero alleges she sought permission to wear a mask as an alternative accommodation. These facts are sufficient to support an inference that MNMC knew of Ruggiero's alleged disability and that Ruggiero communicated to MNMC her desire for an accommodation.

#### **NOTE:**

**In support of this holding, the Third Circuit cited *E.E.O.C. v. Chevron Phillips Chemical Co., LP*, 570 F.3d 606, 21 A.D. Cas. (BNA) 1729 (5th Cir. 2009) (concluding, at summary judgment stage, that a jury could reasonably determine that notes from the employee's doctor constituted requests for accommodations, where the notes requested that the employer relocate the employee to another office, permit her to alternate job duties, and allow her to nap during her lunch break), and *E.E.O.C. v. Sears, Roebuck & Co.*, 417 F.3d 789, 16 A.D. Cas. (BNA) 1761 (7th Cir. 2005) (concluding, at summary judgment stage, that a jury could find that the employer had sufficient notice to trigger the interactive process, where the employee requested permission to use a shortcut and provided doctors' notes "indicating that she suffered from neuropathy and recommending that she be permitted to avoid walking long distances").**

The Third Circuit further reasoned that the fact that MNMC requested more information from Ruggiero to determine if an exemption from the vaccine requirement was warranted rendered implausible any suggestion that MNMC was not on notice of Ruggiero's desire to be accommodated.

#### **NOTE:**

**MNMC had argued that simply informing an employer of a medical condition is insufficient to put it on notice of an employee's limitations or trigger its interactive process obligations. According to MNMC, the plaintiff must allege that her employer is aware not only of her disability but also of the limitation resulting from that disability that potentially requires an accommodation. MNMC relied on *Jin Choi v. University of Texas Health Science Center at San Antonio*, 633 Fed. Appx. 214, 328 Ed. Law Rep. 528 (5th Cir. 2015). The plaintiff in *Choi* alleged that**

he informed the defendant he had attention deficit disorder and required accommodation, but no accommodation was granted. In affirming the dismissal of the complaint, the Fifth Circuit reasoned:

**[U]nder the ADA “it is important to distinguish between an employer’s knowledge of an employee’s disability versus an employer’s knowledge of any limitations experienced by the employee as a result of that disability. This distinction is important because the ADA requires employers to reasonably accommodate limitations, not disabilities.” ... We concluded that “it is incumbent upon the ADA plaintiff to assert not only a disability, but also any limitation resulting therefrom.”**

Interactive Process

As to the lower court’s conclusion that MNMC had satisfied its obligations under the ADA as a matter of law, the Third Circuit reasoned that Ruggiero’s allegations raised the plausible inference that MNMC failed to properly engage in the interactive process. According to the Third Circuit, Ruggiero requested an accommodation—either an exemption from the vaccine requirement or permission to wear a mask—but both were rejected by MNMC without proposing an alternative. These allegations plausibly suggest that MNMC prematurely ceased the interactive process and barred Ruggiero from the individualized inquiry to which she was entitled under the ADA.

**NOTE:**

**In *Taylor v. Phoenixville School Dist.*, 184 F.3d 296, 9 A.D. Cas. (BNA) 1056, 9 A.D. Cas. (BNA) 1187, 137 Ed. Law Rep. 116 (3d Cir. 1999), the Third Circuit adopted the following reasoning set forth in *Bultemeyer v. Fort Wayne Cmty. Schs.*, 100 F.3d 1281, 1285 (7th Cir. 1996):**

**[B]oth parties bear responsibility for determining what accommodation is necessary ... [N]either party should be able to cause a breakdown in the process for the purpose of either avoiding or inflicting liability. Rather, courts should look for signs of failure to participate in good faith or failure by one of the parties to help the other party determine what specific accommodations are necessary. A party that obstructs or delays the interactive process is not acting in good faith. A party that fails to communicate, by way of initiation or response, may also be acting in bad faith. In essence, courts should attempt to isolate the cause of the breakdown and then assign responsibility.**

Discrimination Claim

As to Ruggiero’s ADA discrimination claim, the Third Circuit started its analysis by setting forth the following standard test: to establish a claim of disability discrimination, a plaintiff must show that she: (1) is a disabled person within the meaning of the ADA; (2) is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodations by the employer; and (3) has suffered an otherwise adverse employment decision as a result of discrimination.

The Third Circuit then reasoned as follows:

- • At the pleading stage, a plaintiff need not establish a prima facie case of discrimination.
- • Rather, a complaint is sufficient when it pleads how, when, and where the employer allegedly discriminated against the employee such that an employer is on notice of the basis of the claim against it.

- Ruggiero’s complaint satisfied this test by alleging that MNMC discriminated against Ruggiero when it terminated her on July 31, 2015, after receiving two doctor’s notes indicating that she should be exempted from receiving a required vaccine for medical reasons.

**NOTE:**

**See *Fowler v. UPMC Shadyside*, 578 F.3d 203, 22 A.D. Cas. (BNA) 353 (3d Cir. 2009) (a disability discrimination complaint is sufficient if it identifies an impairment of which the employer allegedly was aware, and alleges that such impairment constitutes a disability; a disability discrimination complaint is not required to go into particulars about the life activity affected by the employee’s alleged disability or detail the nature of her substantial limitations).**

**Retaliation Claim**

As to Ruggiero’s ADA retaliation claim, the Third Circuit started its analysis by setting forth the following standard test: to establish a claim for retaliation, a plaintiff must show: (1) protected employee activity; (2) adverse action by the employer either after or contemporaneous with the employee’s protected activity; and (3) a causal connection between the employee’s protected activity and the employer’s adverse action.

In rejecting the district court’s reasoning that Ruggiero failed to allege that she participated in protected activity and that her claim was too conclusory, the Third Circuit held:

Ruggiero’s good faith request for an accommodation—*i.e.*, exemption from the vaccine requirement—was protected activity under the ADA sufficient to support a retaliation claim. See *Shellenberger v. Summit Bancorp, Inc.*, 318 F.3d 183, 191 (3d Cir. 2003). Furthermore, Ruggiero identified protected activity (her request for an accommodation) and an adverse action (her termination). The temporal proximity between her request for an accommodation and her termination raises a plausible inference of causation. See *Moody v. Atlantic City Bd. of Educ.*, 870 F.3d 206, 221 (3d Cir. 2017) (explaining that temporal proximity between protected activity and adverse action, when “unduly suggestive,” may provide evidence of a causal connection). Thus, dismissal of her retaliation claim was premature.

**NOTE:**

**See also EEOC Enforcement Guidance on Retaliation and Related Issues, § II(A)(2)(e), Notice No. 915.004, 2016 WL 4688886 (Aug. 25, 2016) (a request for reasonable accommodation of a disability constitutes protected activity under the ADA), and *Solomon v. Vilsack*, 763 F.3d 1, 30 A.D. Cas. (BNA) 649 (D.C. Cir. 2014) (same; collecting decisions recognizing the same principle).**

Accordingly, the Third Circuit vacated the district court’s order dismissing Ruggiero’s complaint.

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