

## New Jersey Supreme Court Unanimous Ruling Reminds Employers of Their Duty to Respond to Reasonable Accommodation Requests

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A recent New Jersey Supreme Court decision spells out the dangers for employers who fail to respond to reasonable accommodation requests made by an employee with a disability. In *Richter v. Oakland Board of Education*, the New Jersey Supreme Court unanimously held that employers do not have to engage in “adverse action” against an employee in addition to denying a request for a reasonable accommodation in order for an employee to have a legal cause of action against an employer under the New Jersey Law Against Discrimination (“NJLAD”). Specifically, an employer’s denial of an employee’s reasonable accommodation request is sufficient grounds for an employee to succeed in pursuing a discrimination claim against an employer.

### **Duty to Accommodate Under the New Jersey Law Against Discrimination**

Under the New Jersey Law Against Discrimination, an employer has a duty to accommodate an employee with a disability’s request for accommodation to allow the employee to perform essential job functions. Generally, this duty is triggered when an employee makes a request to reasonably accommodate their disability. Upon request, under the law, the employer and employee are required to participate in the interactive process to determine whether the accommodation requested, or an alternate accommodation, would allow the employee to perform the job with accommodation. The employer either grants the request, or, maintains that the request is unreasonable and/or would present an undue hardship for the employer to grant.

### **The Richter Case**

Mary Richter is a type 1 diabetic and science teacher employed by the Oakland Board of Education who, during the 2012-2013 school year, found herself assigned to a late lunch period at school that she believed would negatively affect her blood sugar levels. Therefore, she requested an earlier lunch assignment from the school principal. He promised Ms. Richter that he would “look into it,” but thereafter he failed to adjust her schedule. During the second quarter of the school year, Ms. Richter’s lunch period was moved to an earlier time. However, during the third school year quarter, her lunch was again scheduled at the later 1:05 p.m. period and so again she asked the principal to reschedule her lunch to an earlier time and, as in the past, he told her that he would “look into it.” It is disputed between the parties as to whether the principal told Ms. Richter that if she was not feeling well she should sit down, have a snack, and report to cafeteria duty when she felt better. However, no writing was uncovered as to these instructions by the principal and, he did not change Ms. Richter’s schedule after the second request to do so. On March 5, 2013, Ms. Richter suffered a hypoglycemic event during the period before her lunch that her students witnessed. She suffered a seizure, lost consciousness, and struck her head on a lab table, causing multiple injuries.

### **The New Jersey Supreme Court’s Ruling**

The New Jersey Supreme Court ruled in *Richter* that the wrongful act in a failure to accommodate claim is the employer’s failure to perform its duty to accommodate, and that a further action against the employee is not required for an employee to state a claim. In other words, an employer need not, in addition to denying an employee’s request for an accommodation, take other action against the employee, such as terminate, suspend, discipline or other negative action. Previous to the *Richter* case ruling, an “adverse action,” such as

termination, suspension, discipline or other negative action, in addition to the employer's denial of the accommodation request, was required for an employee to have a valid claim against the employer.

The ruling in the Richter case clarifies that an adverse action is not an element of a failure to accommodate claim, and declares that "an employer's inaction, silence or inadequate response to a reasonable accommodation request is an omission that can give rise to a cause of action." The Richter case cautions employers against ignoring employee requests for accommodation, providing a stark reminder that they should always respond to an employee's accommodation request clearly and to always engage in the interactive process that is required by the disability laws.

**Takeaway: An employer should not ignore an employee's accommodation request.**

If you are an employer and need help navigating employee requests for accommodation, or any other employment laws, contact [Stephanie Gironda](#) or any member of the Wilentz [Employment Law](#) Team.

#### **Attorney**

- Stephanie D. Gironda

#### **Practice**

- Employment Law