

## Employment Law Update: Are There Limits To Accommodation?

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New Jersey employers should be aware that they must comply with the New Jersey Law Against Discrimination (“NJLAD”), which requires that it is an employer’s duty to engage in an interactive process with an employee who needs accommodations because of a disability. Employers must provide accommodations for an employee who can perform the essential functions of a job with accommodations, unless there is no reasonable accommodation that will allow the employee to perform the essential functions of the job (or it is an “undue hardship” on the employer).

### A New Jersey Case

A recent New Jersey case has raised questions regarding the duty of an employer to accommodate an employee whose disability makes it difficult for the employee to interact with the public, when interacting with the public is an essential function of the employee’s job. Plaintiff John Casanova filed suit against WaWa in the New Jersey Superior Court alleging that his employer failed to accommodate his Tourette syndrome (“TS”). TS is a condition of the nervous system that often results in an individual having motor or vocal tics, and making involuntary sounds or movements. Casanova worked as a WaWa store manager with a six figure salary before he was diagnosed with TS. After he was diagnosed, he requested that WaWa accommodate any outburst resulting from his TS because it would be involuntary and caused by his disability, not an intentional violation of WaWa’s policies and procedures. WaWa denied this request.

Casanova alleges he then requested to be accommodated by a transfer to a non-customer facing position. After denying all accommodation requests without engaging in the interactive process required by law, Casanova alleges, WaWa then retaliated against him for making these requests, resulting in two demotions.

### A Federal Court Decision

Cameron Cooper, a delivery merchandiser for Coca-Cola Consolidated, Inc. (“CCC”) who was diagnosed with TS, sued CCC for failure to accommodate him. A delivery merchandiser for CCC is responsible for merchandising, delivering, and the maintenance of “company standards” at company locations.

Cooper had a form of TS that caused him to involuntarily use inappropriate language, such as racial slurs and profanity. The company received complaints from its customers and employees regarding Cooper’s language. Cooper proposed that CCC provide him with a non-customer facing route, and the company stated it did not have such a position. CCC proposed that Cooper take an available non-customer facing warehouse position. Cooper took the warehouse position, but sued the company under the Americans with Disabilities Act (“ADA”) alleging failure to accommodate his disability.

The Sixth Circuit Court of Appeals, which decided this case, examined whether “excellent customer service” was an essential function of the job of delivery merchandiser. The Court held that it was, relying on the words of the employer’s job description and Cooper’s admission. The Court then determined whether Cooper could provide excellent customer service with an accommodation. The Court ruled that he could not, because of his involuntary use of racist and profane words. The Sixth Circuit then dismissed Cooper’s claims ruling that he

could not identify a reasonable accommodation to allow him to perform the essential job function of “excellent customer service.”

The Complaint in Caselnova does not mention that the employee had any episodes of outbursts involving curse words or racial slurs, which makes the New Jersey case different from the Sixth Circuit case. Employers will have to wait for the Court’s decision to determine whether that fact makes any difference regarding the duty to accommodate.

**TAKEAWAY:** Employers should ensure that they engage in an interactive dialogue with their employees who request accommodations for disabilities, and that their job descriptions specifically identify the essential functions of positions in case those functions are challenged. If you have questions on the employer duty to accommodate, or any federal or New Jersey employment law, contact [Stephanie Gironde](#) or any member of the Wilentz [Employment Law](#) Team.

#### **Attorney**

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#### **Practice**

- Employment Law