

Wrongful Termination Suit Against University of Pennsylvania's Failure to Participate in "Interactive Process"

Complaint alleges violations of New Jersey Law Against Discrimination and the federal Family and Medical Leave Act (FMLA)

SAN FRANCISCO, CALIFORNIA, UNITED STATES, April 1, 2022 /EINPresswire.com/ -- An employee of the University of Pennsylvania Health System filed a lawsuit in the Superior Court of New Jersey alleging that the employer failed to engage in the "interactive process" of the New Jersey Law Against Discrimination (LAD). She also argued that she was discriminated against and ultimately fired based on her use of the Family and Medical Leave Act (FMLA). The case is *Jeannette Johnson-Buffalo v. University of Pennsylvania Health System*, case no. 1:22-cv-01171. The plaintiff's attorney is Brian M. Doyle of the Law Offices of Eric A. Shore in Philadelphia.

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*Richard Koss, Bay Area
Employment Lawyer*

The plaintiff in the case, Jeannette Johnson-Buffalo, worked for the University of Pennsylvania from August 16, 2004, through January 2016 but then rehired in June 2018. Just six months after being rehired, the plaintiff began to “experience debilitating pain in each of her hands.”

In April 2019 Ms. Johnson-Buffalo was diagnosed with bilateral carpal tunnel syndrome which caused her to have numbness and pain in both hands. Ms. Johnson-Buffalo had already been diagnosed with fibromyalgia before this, which “exacerbated the pain.” Fibromyalgia is a condition that causes pain and stiffness all over the body. It can also impact an individual's sleep, increase fatigue, and lead to depression and anxiety. Fibromyalgia affects 2% of the adult population in the United States. Women are found to be twice as likely to have the condition. As an Accounts Receivable Representative, this impacted her ability to perform a major part of her job, typing on a keyboard.

Then, in June 2019, Ms. Johnson-Buffalo applied for intermittent medical leave under the Family and Medical Leave Act (FMLA). She was approved by her employer to use FMLA leave three days

per month from June 26, 2019, through December 26, 2019, and then again between November 7, 2019, and January 20, 2020. The employer also approved supplemental medical leave until February 24, 2020.

FMLA provides “unpaid, job-protected leave” for eligible employees with specific family and medical needs. Under FMLA, employees can receive up to twelve workweeks of leave per 12-month period for a “serious health condition that makes the employee unable to perform the essential functions of his or her job.”

An employee does not have to take FMLA leave all in one block; the leave can be taken intermittently in separate blocks of time throughout the 12 months. In this case, Ms. Johnson-Buffalo was approved for weekly use of FMLA leave.

Additionally, under FMLA, an employer can temporarily transfer an employee to an equivalent job during this use of leave based on the needs of the company and the specific accommodations that the employee needs to perform their duties. However, the employer is prohibited from terminating or permanently changing the individual's job when they use this federally-backed benefit.

The New Jersey Law Against Discrimination (LAD) protects employees from discrimination and harassment based on protected characteristics, including disability. LAD also guarantees that an employer cannot fire an employee based on a disability and must in good faith participate in the “interactive process” of finding appropriate accommodations for an employee.

The interactive process is a feature of the LAD as well as the Americans with Disabilities Act (ADA) it is patterned after, and it is found in similar laws in other states as well, such as the Fair Employment and Housing Act (FEHA) in California. [San Francisco employment law attorney Richard Koss](#) explains that the interactive process involves a discussion between employee and employer, but that it doesn't have to result in an accommodation every time. “There may be no accommodation possible,” says Koss, “or the possible accommodations could cause undue hardship for the employer” and therefore not be required.

According to Koss, in California at least, there is a split of authority in the courts as to whether a claim of failure to enter into the interactive process will succeed if no reasonable accommodation is possible.

State laws like New Jersey's LAD and California's FEHA can go beyond the ADA in their protections



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Employment Attorney

for employees, according to attorney Koss. He shares that FEHA states that the ADA is a floor and FEHA provides additional protections to the employee. "The standard of proof is different as well," adds Koss, "as are statutes of limitation."

An employee in New Jersey must prove that the employer acted in bad faith when working to accommodate the employee. For example, if the employer makes a promise to assist in some way but has no intention of following through, then the employee may file a complaint claiming that the employer violated the LAD.

Later, in the Fall of 2019, Ms. Johnson-Buffalo approached her management in an attempt to engage in the interactive process under the LAD. She requested accommodations for her carpal tunnel syndrome, including periodic breaks from typing and a "speak to type" software. According to the complaint, she was told by a member of the Human Resource department to "just take time off or get a new job" in response to the request.

In January 2020, Ms. Johnson-Buffalo's doctor submitted a note to her employer that she had recently undergone surgical treatment for her bilateral carpal tunnel syndrome and "could not return to work until she received her first post-operative checkup." A few weeks before she was to return to work, Ms. Johnson-Buffalo sent a text message to her boss to let her know she would be needing to wear splints while typing and requested a "desk assessment" to determine if her desk and work environment should be modified to accommodate for her disability. Her manager did not respond.

Ms. Johnson-Buffalo returned to work on February 24, 2020. That same day, she was terminated due to alleged "failure to complete work properly."

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