

Your Monthly Legal Update – November 2009

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**DID YOU KNOW THAT SEASONAL AFFECTIVE DISORDER IS A DISABILITY?**

Employers take note, the “winter blues” might actually require reasonable accommodation. On October 6, 2009 the Seventh Circuit Court of Appeals (our appellate court at the federal level) overturned the lower district court’s decision granting the employer summary judgment (meaning a full dismissal of the case). The Seventh Circuit held that a legitimate issue did exist as to whether a School District could reasonably accommodate a teacher with Seasonal Affective Disorder (SAD) as required by the Americans with Disabilities Act. *See Ekstrand v. School District of Somerset* (No. 09-1853)

In this case, the teacher was an elementary school teacher (Rena Ekstrand) in the Somerset School District from 2000 to 2005. During the 2005/2006 school year, she requested to move to a kindergarten position and this request was granted. The room that she was assigned as a kindergarten teacher lacked exterior windows. Ms. Ekstrand attempted to speak with her principal about her SAD and asked for a classroom with natural light. It is interesting to note that two classrooms with natural light were open at the time of this request. The School District refused to reassign her to a classroom with windows.

In October, 2005, Ekstrand went out on medical leave for her SAD. On November 28, 2005, Ms. Ekstrand’s psychologist informed the School District that the only way to reasonably accommodate Ms. Ekstrand’s disability was to put her in a classroom with natural light. Once again, the District refused to accommodate Ms. Ekstrand. As a result of the School District’s refusal to reasonably accommodate Ms. Ekstrand, she was unable to work for the District again.

In 2008, Ms. Ekstrand sued the District alleging a violation of the ADA, refusal to accommodate her disability, but U.S. District Court Judge Barbara B. Crabb (our Western District Court) granted summary judgment in favor of the District. *Ekstrand v. School District of Somerset*, 603 F.Supp.2d 1196 (W.D. Wis. 2009). Ms. Ekstrand appealed from this decision. The Seventh Circuit Court of Appeals did not agree with Judge Crabb and reversed her decision.

Ultimately, the Court of Appeals concluded that once the District became aware of Ms. Ekstrand’s disability and need for natural light, it was obligated to reasonably accommodate that need unless it would impose a “due hardship.” It was significant to the appellate court that two rooms with natural light were open and available to resolve the problem. One was empty, and the other had a teacher willing to switch rooms. The court analyzed the costs involved in this reasonable accommodation and found the costs to be sufficiently modest that a jury could find that the accommodation reasonable consistent with the ADA.

Why this employer did not just provide a classroom to accommodate seems to raise an issue of common sense. If an accommodation request is reasonable, employers need to assess the costs involved to determine reasonableness. If the costs are minimal, the employer better implement the reasonable accommodation.