The Need to Accommodate Animals in the Workplace

By Greg Currey

In recent years, employers have begun to see more frequent requests by employees to be allowed to have emotional support animals in the workplace as an accommodation for a mental health disability. What should an employer do when an employee claims to have a disability and that they need to bring an emotional support animal with them to work?

GREG CURREY, *Esq.*
gcurrey@wcslaw.com
410-659-1354

The Americans with Disabilities Act, applicable to companies with 15 or more employees, requires that employers provide reasonable accommodations to employees with disabilities which would enable them to perform the essential functions of their positions unless doing so would pose an undue hardship on the employer. Allowing an individual with a disability to have a service animal or an emotional support animal accompany them to work may be considered such a reasonable accommodation.

In the case of a service animal or an emotional support animal, if the disability is not obvious and/or the reason the animal is needed is not clear, an employer may request documentation to establish the existence of a disability and how the animal helps the individual perform his or her job.

Documentation might include a detailed description of how the animal would help the employee perform job tasks and how the animal is trained to behave in the workplace.

A person seeking such an accommodation may suggest that the employer permit the animal to accompany him/her to work on a trial basis. While the initial case law protected the use of service dogs at work, the EEOC has sued at least one employer, CRST Transportation, for failing to hire an individual who requested the use of an emotional support animal at work. That case, *EEOC v. CRST Intl., Inc.* is currently pending in the Northern District of Iowa.

An employer is not required to provide an employee's desired accommodation, so if there is another accommodation that would allow the employee to perform the essential functions of his/her position, the employer may elect to provide the other accommodation. Both service and emotional support animals may be excluded from the workplace if they pose either an undue hardship or a direct threat in the workplace. This may include focusing on the facilities and the allergies or health of other employees as well. Requests for reasonable accommodation frequently involve fact-specific inquiries.

MARY ALICE SMOLAREK, *Esq.*
masmolarek@wcslaw.com
410-659-1318

Maryland's Estate Tax

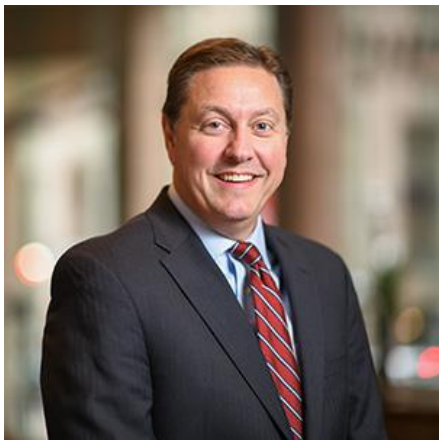
By Mary Alice Smolarek

You may have recently read that Gov. Hogan allowed the Maryland estate tax bill (SB 646) to become law without signing it. This means that Maryland's estate tax exemption will be $5 million for decedents dying on or after January 1, 2019. The bill includes portability of a previous deceased spouse's unused Maryland exemption. This applies if a federal return was filed electing portability for decedent's dying prior to January 1, 2019. For decedent's dying after January 1, 2019, a Maryland estate tax return must be filed electing portability.

The Sisterhood of Wearing Hotpants

By Don Walsh

A good reminder of the lengths to which Federal law extends to protect pregnant workers recently came about for Nick's Sports Grill, a sports bar in Rowlett, Texas. In what can only be described as a disguised plan to fire a pregnant employee, Nick's fired one of their employees claiming she would no longer wear their uniform. As a result of its conduct, Nick's will now pay $24,000 and provide other relief to settle the suit brought by the U.S. Equal Employment Opportunity Commission (EEOC).



DON WALSH, *Esq.*
dwalsh@wcslaw.com
410-659-1320

According to the EEOC's suit, the mandatory uniform at Nick's Sports Grill consisted of a tight, body-hugging shirt and short hot pants. When Taylor King, a bartender, started wearing Capri pants instead of the usual hot pants uniform and added a second layer of clothing to the usual tight top because of her pregnancy, the general manager told her that the owner would not approve, and forced her off the job. This violated the Pregnancy Discrimination Act.

As is typical of EEOC suits, in addition to the monetary relief for the employee, the decree requires Nick's to disseminate specific parts of its employee handbook to all employees; provide annual training on pregnancy and other forms of discrimination; report all complaints of discrimination to the EEOC for the decree's term; impose discipline up to termination on any manager who discriminates based on sex or permits such conduct to occur under his or her supervision; and post a notice on employee bulletin boards about the decree, explaining procedures for reporting discrimination.

According to the EEOC, "Even bars and clubs with provocative uniforms cannot discriminate by using the dress code requirement to oust a pregnant employee." This suit serves as an important reminder to employers that pregnancy may mean you look different, but it doesn't mean you can't do your job.

Silent Action

By Michael Stover

MICHAEL STOVER, *Esq.*
mstover@wcslaw.com
410-659-1321

You must be *very* careful if you are asserting an agency-level protest against a government agency. In a prior Weekly Wright Report article, we discussed the "Accidental Protest" where an e-mail to the contracting officer could be deemed an agency-level protest, even if there was no intent to protest.

In *MLS-Multinational Logistics Services, Ltd.*, the Government Accountability Office (GAO) held that the protester's challenge to the terms of the solicitations were untimely because the 10-day deadline to protest was triggered by the government's silence.

In *MLS Multinational*, the protester filed agency-level protests with the government objecting to the terms of the solicitations. Despite the protests to the agency being timely filed before the closing date for receipt of proposals, the government proceeded with the bid openings a few days later. After the government provided its decisions denying the protests, the protester filed its protest with the GAO within 10 days of the decisions. The protests were dismissed as untimely.

To be considered timely, a protest following an agency-level protest must be filed within 10 calendar days of "actual or constructive knowledge of initial adverse agency action." The GAO concluded that this includes inaction by the agency, as long as the inaction is prejudicial to the position taken in a protest filed with the agency. This may include "the opening of bids or receipt of proposals."

This ruling was consistent with a long line of decisions reasoning that once the contracting activity proceeds with receipt of proposals, the protester is on notice that the contracting activity will not undertake the requested corrective action. The GAO stated that the "government's actions in allowing the proposal deadlines to lapse, without revising the RFPs, was undeniably prejudicial to MLS's position." Agency-level protests have many pit-falls, let us guide you through the labyrinth.

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