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## ***CONNECTICUT SUPREME COURT RULES THAT EMPLOYERS HAVE AN IMPLICIT DUTY TO "REASONABLY ACCOMMODATE" ITS DISABLED EMPLOYEES***

*Curry v. Allan S. Goodman, Inc.*, 286 Conn. 390 (2008).

The Connecticut Supreme Court recently ruled on a case of first impression involving an employer's duty to provide reasonable accommodations to its disabled workers under state law. The Court reversed the trial court's decision to award summary judgment in favor of the defendant, Allan S. Goodman (hereinafter "defendant" or "Goodman"), on John Curry's (hereinafter "plaintiff" or "Curry") claim that the defendant discriminated against him because of his disability, thereby violating Connecticut General Statutes § 46a-60.

Curry injured his back during work and was thereby relegated to a temporary, light-duty position when he returned in September 2000, two years after the occurrence of the injury. He continued to work under physical restrictions set by his doctor until he was terminated by the defendant in April 2001, based on the determination that there was no suitable position for him. Curry's attorney subsequently sent a letter to one of the defendant's managers, advising him of the defendant's obligation to provide reasonable accommodations under the law, and requesting that the defendant reconsider its decision to terminate the plaintiff. The record does not reflect that the defendant took any action in response to the letter.

The Court's ruling that C.G.S. § 46a-60 imposes a duty on employers to provide reasonable accommodations to their disabled employees was largely influenced by the manner in which the Commission on Human Rights and Opportunities (CHRO) has addressed the same question. Although this case was not heard on an administrative appeal from the agency's decision, the Court declared that the CHRO's interpretation would be accorded deference, provided that the interpretation "has been formally articulated and applied for an extended period of time, and that interpretation is reasonable." Accordingly, the Court found that the CHRO's position that the statute includes a duty of reasonable accommodation was entitled to deference and adopted such interpretation of the statute.

The Court next looked to federal law for guidance in enforcing the state statute. Federal law essentially imposes a duty upon the employer that is triggered when a disabled employee suggests a reasonable accommodation to his employer. The employer must make a good faith effort to participate in an informal and interactive process with the employee to identify potential reasonable accommodations that could overcome the limitations caused by the disability. The Court found that the plaintiff satisfied his burden of initiating the process by

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way of the letter his attorney sent to the defendant, soon after the plaintiff's termination. The defendant's response in ignoring the letter was "clearly not the dialogue envisioned by the interactive reasonable accommodation process and the defendant's duty of good faith compliance."

Although the Court found that the defendant's failure to engage in the process was some evidence of discrimination and sufficient, in itself, as grounds for denying the defendant's motion for summary judgment, the Court also offered an alternative basis for reversing the trial court's grant of summary judgment. A review of the record revealed to the Court that the primary disputed issue between the parties was not whether the plaintiff was to remain on light duty as an accommodation for his disability; rather, it was whether he could perform the essential functions of the night warehouse position he had applied for prior to his termination without a reasonable accommodation.

The holding bears a potentially significant impact on the employment practices of "small" employers with 3-14 employees, who are excluded from the federal law requiring employers with fifteen or more employees to provide reasonable accommodations to physically disabled employees. The decision may be particularly concerning in light of the Court's discussion of the employer's duty to engage in an interactive process with an employee who raises the issue of a reasonable accommodation. The temporary light-duty work that the defendant initially provided to Curry failed to garner it any favor with the Supreme Court, which focused instead on the defendant's failure to satisfy its duty to engage in an interactive process when it did not follow up on the letter it received from plaintiff's counsel after the termination. Employers should consult their employment counsel to review their employment policies in light of this decision.

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This Employment Alert was prepared by Christopher L. Brigham and Angel Peterson, a third year law student at Quinnipiac University School of Law, who will be joining Updike, Kelly & Spellacy, P.C. as an associate in September 2008. For further information on this case or any other employment related question, please contact Christopher L. Brigham of the Employment Law Practice Group at Updike, Kelly & Spellacy, P.C. at (203) 786-8310 or [cbrigham@uks.com](mailto:cbrigham@uks.com)

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