

Recent LIRC Decision Addresses Employer Obligations with Respect to Reasonable Accommodation of Disabilities

Under the Wisconsin Fair Employment Act (WFEA), employers may not discriminate against an employee, or applicant for employment, on the basis of that individual's disability. The employer has an affirmative obligation to consider "reasonable accommodations" that would allow the individual to perform the functions of the position satisfactorily. Oftentimes, however, it is not clear how an employer may satisfy this obligation, particularly when an individual's disability poses a safety hazard to the work environment.

The Labor and Industry Review Commission's (LIRC's) recent decision in *Willis v. Stoughton Trailers* is a useful guide to employers when faced with the task of reasonably accommodating an applicant's disability. Willis, who suffered from profound deafness, applied for a position as an assembler in one of Stoughton Trailer's (Stoughton's) plants. Though Willis had worked with machinery before, none of his previous positions involved a complex manufacturing environment similar to that found in Stoughton's facility.

After Willis applied, Stoughton took him on two tours of its plant so that Willis could assess the work environment and propose accommodations for his disability, which Stoughton considered along with Willis's work history. Stoughton concluded that none of the accommodations would allow Willis to work safely and effectively as an assembler in light of the complexity of the safety hazards and communication demands of the position. Consequently, Stoughton informed Willis that he would not be hired.

Willis sued Stoughton, alleging disability discrimination. In the subsequent action, Stoughton stipulated that Willis was disabled and that the disability was the reason it did not hire him. LIRC ruled in favor of Stoughton, primarily because none of the accommodations Willis suggested would have allowed him to work safely and effectively as an assembler. More importantly, however, LIRC noted that Stoughton had no obligation to consider accommodations other than those presented by Willis himself. And, to the extent Stoughton was required to engage Willis in an interactive process to determine possible accommodations, it did so by twice touring the plant with Willis and then considering each of his suggested

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accommodations individually and in combination. Stoughton was not required to interact with anyone other than Willis, such as a vocational expert, before making its hiring decision.

Additionally, LIRC's decision is an important clarification of the Wisconsin Supreme Court's decision in *Crystal Lake Cheese Factory v. LIRC*. There, the court held that the employer was required to reasonably accommodate an employee by modifying or eliminating certain job responsibilities. Here, Willis argued that Stoughton should have modified some of the duties of an assembler as an accommodation. LIRC, however, rejected this argument because the record established that Willis could have performed safely and effectively at only one of the seven stations through which assemblers rotated. Willis's proposed accommodation would have effectively created a new position, which an employer is not required to do for a new hire.

The decision in *Willis* offers employers concrete guidance for appropriately handling applicants for employment who have a disability. First, the employer must give the individual an opportunity to suggest reasonable accommodations. In the case of an applicant for employment, this may require allowing the applicant to observe the work environment. Second, the employer must consider the individual's work history in conjunction with the individual's suggestions. That an applicant successfully used an accommodation in a prior, similar work environment is strong evidence that the accommodation is reasonable. Third, the suggested accommodations should be considered both individually and in combination with one another.

[Reinhart's Labor & Employment Department](#) is experienced in helping employers make these decisions and stands ready to assist employers faced with these challenges.

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