

FOR YOUR INFORMATION

News for School Clients

**CRYSTAL LAKE CHEESE
FACTORY v. LABOR and INDUSTRY
REVIEW COMMISSION**

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Crystal Lake Cheese Factory v. Labor and Industry Review Commission

On July 11, 2003, the Wisconsin Supreme Court issued a decision in *Crystal Lake Cheese Factory v. Labor and Industry Review Commission*, 2003 WI 106. The decision appears to impose a new obligation for employers who employ individuals with disabilities. Both the Americans with Disabilities Act (ADA) and the Wisconsin Fair Employment Act (WFEA) have been interpreted to require that employers provide reasonable accommodations for employees with disabilities so that the employees may enjoy the “benefits and privileges of employment” equal to those enjoyed by similarly-situated employees without disabilities. In providing an accommodation for a disabled employee, job restructuring, such as relocating or redistributing job functions that an employee is unable to perform because of his/her disability, or altering when and/or how a function is performed, may be a reasonable accommodation. However, under the ADA, an employer is not required to eliminate or redistribute an essential job function as a reasonable accommodation. The decision in *Crystal Lake* clarifies state law on this issue, and creates a divergence between the ADA and the WFEA for Wisconsin employers.

The WFEA applies to all employers in Wisconsin with at least one employee, and includes the State of Wisconsin and other governmental bodies, such as school districts. Some of these employers are also governed by the ADA, which covers employers with 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

Both the ADA and the WFEA prohibit discrimination against individuals with disabilities and generally do so in a very similar manner. As such, in most cases dual coverage is not a concern. However, where the laws diverge, it is important to comply with the stricter law. Under the both the ADA and the WFEA, restructuring a disabled employee’s job may be a reasonable accommodation. *EEOC v. AIC Sec. Investigations, Ltd.*, 55 F.3d 1276 (7th Cir. 1995); *Target Stores v. LIRC*, 217 Wis.2d 1 (Ct. App. 1998). However, under the ADA, the restructuring may focus on removing only non-essential duties from the position. An employer is not required to transform a position dramatically by eliminating essential functions of the job as an accommodation of an employee’s disability.

In *Crystal Lake*, the employee, Susan Catlin, was employed as one member of a four-person department within the company's wholesale department. The main duties of the wholesale department were to cut cheese into specified quantities and sizes according to orders, and then package, seal, label and box the cheese for shipping. All four workers in the department were cross-trained in all four positions so that they could assist one another when an employee fell behind or the department was busier than usual.

While employed by Crystal Lake, Ms. Catlin became a quadrapalegic as a result of a non-work-related accident. When she was ready to return to work after her accident, Crystal Lake declined to return her to work because the management consultant hired to evaluate the essential duties of the four positions in the department in light Ms. Catlin's physical restrictions concluded that Ms. Catlin was unable to perform the essential functions of her job. Specifically, the management consultant determined that Ms. Catlin could only be accommodated by modifying her job so that she would not have to perform many physical aspects of the job, including climbing, lifting or standing. Ms. Catlin suggested that her position could have been restructured to make it more clerical. Thus, Crystal Lake, believing it did not have an obligation to restructure

Ms. Catlin's position in this manner, declined to do so and terminated her.

The Court in *Crystal Lake* has expanded the Wisconsin employer's obligation to accommodate a disabled employee by requiring that an employer restructure a position by eliminating or redistributing the essential functions of the position, if necessary. The Court held that a reasonable accommodation is not limited to that which would allow the employee to perform adequately all of his/her job duties. A change in job duties may be a reasonable accommodation in a given circumstance. In *Crystal Lake*, the employer was required to rehire Ms. Catlin and restructure her position to accommodate her disability.

Furthermore, the Court suggested that if the other employees on a team are willing to take on certain tasks from a disabled employee, the employer may not argue that it would be a hardship to restructure the disabled employee's position by exempting her from those tasks.

If you employ a disabled individual who has requested an accommodation that you believe presents a hardship for the employer, we encourage you to contact your legal counsel to discuss the implications, if any, of the decision in *Crystal Lake*.

If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.

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