

Lori I. vande zande v.
state of wisconsin
department of
administration



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There are many differing opinions on what constitutes a reasonable accommodation. There is a plethora of court cases on this very issue. Oftentimes, employees and employers are not able to agree on what should be considered reasonable. The court case *Lori L. Vande Zande v. State of Wisconsin Department of Administration* is one such case. It also helps to set some precedents on what constitutes a reasonable accommodation. By reviewing past cases, as *Lori L. Vande Zande v. State of Wisconsin Department of Administration*, employers can gain a better understand of what actions constitute a reasonable accommodation.

Lori Vande Zande worked for the state of Wisconsin in the housing division. As a result of a tumor on Vande Zande's spine, she became paralyzed from the waist down. Her employer, the state of Wisconsin, made several accommodations to their office building so Vande Zande would be able to move about the space with a little more ease. Despite the many accommodations provided by her employer, Lori L. Vande Zande felt the state of Wisconsin should have done more. Vande Zande had three claims on how her rights under the ADA were violated (“ FindLaw's United States Seventh Circuit Case and Opinions”).

Vande Zande began her argument by claiming she had recurring ulcers as a result of her paralysis, and that her employer claimed this was not considered as part of her disability as temporary conditions are not usually covered by the ADA. Vande Zande rebutted this by pointing out that AIDS is a disease that is covered by the ADA. If an employee with AIDS has a flare up, he or she is protected because it is a result of her disability. The court agreed with her on this point. From here, Vande Zande made a complaint <https://assignbuster.com/lori-l-vande-zande-v-state-of-wisconsin-department-of-administration/>

that her employer would not allow her to work from home during a flare up. When she discussed the idea with one of her supervisors, he told her that she would only be able to work at on a part-time basis and that the rest of the time she was unable to work would come out of her sick leave. In response to this claim, the state department informed the court that this was due to Vande Zande's position. The work performed in the housing department required Vande Zande to work with others and to have someone supervising her work. By allowing her to work at home, the business would not function as well as it should be. They also pointed out that Vande Zande received her full pay as she only used approximately sixteen hours of sick time. The court agreed with the state of Wisconsin on this claim. After examining past rulings, they felt allowing an employee to work from home was not a reasonable accommodation (“ FindLaw's United States Seventh Circuit Case and Opinions”).

Lori Vande Zande's second claim was that her request for lowering the sinks in the cooking areas was denied. When construction began on the new building, the plans showed sinks that were two inches higher than what Vande Zande would easily be able to reach in a wheelchair. When she presented this predicament to her employers, Vande Zande says they denied her request to lower the sinks. The bathroom sinks were the appropriate height, but Vande Zande felt using the bathroom sink when needing wash dishes would label her. In response to this claim, the state of Wisconsin said that Vande Zande made the request for the sinks to be lowered after construction had already begun, which Vande Zande admitted to. Because the construction had already begun, the plumbing for the sinks the cooking

areas had already been completed. They also pointed out that the bathroom sinks were a good height for Vande Zande and not too out of the way from the break rooms. The court once again ruled in favor of the state of Wisconsin. This was due to the accessibility of the bathroom sinks and the hardship that would be placed on the employer if they had to have the plumbing redone on the sinks (“ FindLaw’s United States Seventh Circuit Case and Opinions”).

While Vande Zande also made claims of discriminatory comments, which she could not prove, the court ruled that the State of Wisconsin Department of Administration had made many reasonable (and some unreasonable) accommodations for Vande Zande and the accommodations she was requesting would cause an undue hardship on the state.

By reviewing cases like this one, employers can gain an understanding on what constitutes as a reasonable accommodation and what does not.

When employers and their employees are attempting to find reasonable accommodations, they must first complete a process called the interactive process. Employers must know what the interactive process is, as well as what is required for the process. By having an understanding of what the interactive process is, and looking at court cases on involving the interactive process, employers can protect themselves from potential lawsuits.

The interactive process is a colloquial conversation between an employer and an employee that has a disability. During this conversation, the employer and employee discuss what essential functions the employee will be able to do on his or her own, and what accommodations the employee will

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need. Courts require employers to discuss three main points during the interactive process. The first is to review the tasks required by the position. This is done in order to reaffirm what tasks are essential and which are not. Second, the employer and employee discuss what tasks the employee will not be able to on his or her own. Lastly, they must discuss possible accommodations. The interactive process cannot be performed only by the employer; employees are required to participate in the interactive process. This alleviates a small part of the burden of performing the interactive process from the employer. While the interactive is a requirement, the ADA does require employers to perform the interactive process if a reasonable accommodation does not exist (“McDonough 2013). Employers should have an understanding of the interactive process and what they are required to do.

Employers can protect themselves from potential lawsuits by reviewing past cases, and learning from them. One such case is *Mary Phillips v. Victor Community Support Services, Inc.* While working at Victor Community Support Services, Phillips developed health issues that resulted in reoccurring bouts of pneumonia. This required Phillips to miss work quite a bit. She talked to her supervisor at Victor Community Support Services, Inc. about providing her with extensions for work. Phillips’ supervisors met with her to discuss extensions and ensure she was doing well with her workload. The supervisors kept written documents for every time they met with Phillips and had her sign these documents. Phillips claimed she made requests, but had no proof since they were mostly given verbally (Garcia 2017). Phillips received disciplinary action and was eventually terminated. She filed a

lawsuit against Victor Community Support Services, Inc. with claims of discrimination. She argued that Victor Community Support Services, Inc. did not make appropriate accommodations, as well as that her termination was done as a result of discrimination and retaliation. In response to these claims, Victor Community Support Services, Inc. argued that Phillips did not participate in the interactive process, making it difficult for the employers to find a decent accommodation. They also argued that the disciplinary action and termination were not a result of discrimination, but were in fact the result of two infractions committed by Phillips. The employers also mentioned that Phillips informed her employers that her license had expired, and she therefore could work for a time. Looking at this evidence, the court ruled in favor of Victor Community Support Services, Inc. The court made a statement saying that while it is the employer's responsibility to make reasonable accommodations, it is not only their responsibility to conduct the interactive process. The employee must take part in the process. Since Phillips did not communicate in an effective manner, or possibly at all, the court ruled that she did not fulfill her end of the interactive process. They also concluded that Victor Community Support Services, Inc. had the right to terminate Phillips based on her performance at work. Phillips, unhappy with this ruling, appealed the decision; however, the appellate court agreed with this ruling and let it stand ("Mary Phillips v. Victor Community Support Services, Inc.").

The interactive process must take place between an employer and a qualified employee with a disability. Employers should know what is to take

place during these meetings, and ensure all reasonable accommodations are made.

It is important to for current and future employers to be well versed in the ADA. By reviewing past cases, employers can learn how other employers protected themselves, as well as where they failed. This will allow the employer to apply what worked and learn what did not.

One case that could teach employers a thing or two is *Nunies v. HIE Holdings*. Nunies worked for HIE Holdings as a truck/delivery driver. The job required Nunies to lift heavy objects, specifically five-gallon bottles of water. After doing this job for a number of years, Nunies developed a pain in his shoulder, which turned to be a tear in his shoulder along with several other issues. Nunies reported the pain and requested to trade positions with a man who worked part-time in the company's warehouse. This solution worked for a while. However, after working in the warehouse for a time, HIE Holdings informed Nunies they would no longer be able to accommodate him as they were doing away with the part time position. Shortly after being told this, Nunies saw an ad for the position he was about to vacate. Nunies filed a claim stating the HIE Holdings had discriminated for his disability (" Herman N. Nunies v. HIE Holdings, Inc. ").

In a rebuttal to this claim, HIE Holdings made two arguments. First, they argued that Nunies was legally not allowed to sue HIE Holdings because he did not report the claim to the Labor Board, thus blocking him from making the claim. Second, HIE Holdings argued that Nunies was not disabled, considered a qualified employee, or the victim of adverse treatment. The

court agreed with HIE Holdings, and ruled in their favor. However, Nunies quickly applied for an appeal. The appellate court disagreed with the initial ruling. Because Nunies was unable to lift objects, the tear in his shoulder counted as a disability as it interfered with his day to day life. The appellate further stated that by posting Nunies's job after telling him the position would no longer exist, provided potential evidence. The appellate court did not reverse the original claim on the state level; however, they did on the federal level ("Herman N. Nunies v. HIE Holdings, Inc.").

Cases such as *Nunies v. HIE Holdings, Inc.* provide great examples of what can go wrong, and how an employer can protect him/herself.

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