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Just One Mistake in Accommodating Disabilities Could Lead to Liability for Employers

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On October 15, 2009, a California Court of Appeal issued an opinion upholding a jury verdict imposing liability on an employer for a *single incidence* of failure to accommodate.

In *A.M. v. Albertsons*, 09 S.O.S. 6015 (California Court of Appeal, First District), a grocery store worker who was undergoing treatment for cancer sued her employer for failure to provide a reasonable accommodation by not letting her use the restroom on one occasion. The employee had told Albertsons store managers that to cope with the side effects of the treatment, she needed to drink large volumes of water and urinate often. The store managers gave her special permission to keep water at her check stand and told her to tell the on-duty manager whenever she needed coverage to use the restroom. This arrangement worked for a year, until a new manager, who was unaware of the situation, brushed aside the employee's requests to leave her check stand on a busy day when the store was thinly staffed. The employee dutifully stayed at her check stand and eventually urinated while standing at the cash register in front of customers. A jury later awarded the employee $200,000 in damages, $148,000 of which were for emotional distress caused by the humiliation of the check stand incident.

On appeal from the jury verdict, the employer argued that it had fulfilled its obligation to accommodate the employee, and it was the employee's responsibility to communicate her needs to the individual manager. The Court of Appeal disagreed, concluding instead that once the employer and employee have agreed upon the details of a reasonable accommodation, it falls to the employer to ensure that the accommodation is implemented.

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Next, the employer argued that because it had accommodated her for a year, this single instance did not rise to the level of failure to accommodate under the Fair Employment and Housing Act ("FEHA"). The Court disagreed again, noting that neither the FEHA nor case law has ever required an employee to show a *pattern* of failure to accommodate. In fact, the Court noted – citing to the example in this case that failing to accommodate an employee just once could lead to serious physical or mental health issues.

This case demonstrates that even the most well-intentioned employers could find themselves faced with liability. Albertsons had a detailed procedure for providing reasonable accommodations. Off-site human resource managers, not store managers, were supposed to decide whether to accommodate an employee and document the accommodation in writing. Store managers, however, often departed from this procedure by dealing with requests on their own: granting requests orally, not vetting the employee's statements, and then not telling other supervisors or management about the accommodations.

To help minimize the risk Albertsons faced in this case, employers should be vigilant about making sure day-to-day supervisors have the information they need to respond to the requests of employees who have been granted accommodations. Of course, an employer must be careful to protect the employee's confidentiality by sharing this information only with supervisors who work directly with the employee. As the *Albertsons* case makes clear, inadequately communicating the details of an accommodation can create liability, even in the case of a single mix-up.

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