

Summertime “Weekend Warrior” Injuries and Light-Duty Work Programs – What Effect Will They Have on Employers?

By Brent J. Seifert, Esq.

Summertime is upon us and “weekend warriors” are out in force playing baseball, running, swimming and completing backyard projects. In performing unaccustomed strenuous activity many people will experience temporary injuries like pulled muscles, sprained ankles and broken arms. Many employers understand injuries are a part of life and accommodate temporary injuries by allowing employees to utilize light-duty work assignments. Unfortunately, even when precautionary steps are taken to ease an employee’s workload sometimes temporary injuries turn into permanent disabilities. Faced with this situation, California employers find themselves asking: “To comply with the Americans with Disabilities Act (“ADA”) and the California Fair Employment and Housing Act (“FEHA”), are we required to convert temporary light-duty work assignments into permanent positions as a “reasonable accommodation?””

In 2006, the California appellate court held that reasonable accommodation requirements found in the ADA and FEHA do not require an employer to convert a temporary light-duty position to a permanent position if doing so would in effect create a new position. (*Raine v. City of Burbank*, (2006)135 Cal. App. 4th 1215.)

In *Raine v. City of Burbank*, Raine, a police officer for the Burbank Police Department, had suffered a knee injury. Raine had difficulty running, jumping, kneeling and lifting, activities that were essential to perform the duties of a patrol officer. The Department reassigned Raine to a temporary light-duty position at the station’s front desk to accommodate him while his injury healed. Raine remained in the position for six years at which time the Department was advised by Raine’s physician that Raine’s disability was permanent and he would never be able to perform the essential functions of a patrol officer.



Once advised of the permanent disability, the Department arranged a job analysis with input from Raine and his immediate supervisor as part of an “interactive process.” Upon the Department’s determination that no position was available for a sworn police officer with Raine’s qualifications and physical limitations, Raine asked to be reassigned to the front desk as an accommodation.

The Department declined his request because the only persons working the front desk on a permanent basis were civilian technicians receiving less benefits and pay than sworn officers. Raine decided to take disability retirement and after exhausting his administrative remedies and obtaining a right to sue letter from the Fair Employment and Housing Commission, he filed suit against the Department.

The trial court granted the Department’s motion for summary judgment and on appeal the appellate court upheld the trial court’s decision. The trial court held that under FEHA, if a disabled employee cannot be accommodated in their existing position and the requested accommodation is reassignment, an employer must make affirmative efforts to determine whether a position is available. However, an employer is not required to “create” a new position as an accommodation if the employer does not regularly offer such assistance to other disabled employees.

Therefore, in an effort to comply with the ADA and FEHA disability laws employers with light-duty work programs should:

- Clearly define criteria, defining when an employee may be eligible for light-duty work.
- Set clear and reasonable time periods for how long an employee can work on light-duty assignments.
- Closely monitor employees on light-duty to determine whether their injuries are temporary or permanent.

Employers who need assistance with creating or managing a light-duty work program or who need information regarding light duty under ADA and FEHA should contact Cook Brown, LLP for appropriate legal advice. ■

