

# Significant Wisconsin Supreme Court Decision Affecting Wisconsin Employers

Jul 01 2003

Practice Area: Labor and Employment

---

Recently, the Wisconsin Supreme Court decided *Crystal Lake Cheese Factory v. Labor and Industry Review Commission*. The decision requires employers to take significant steps in dealing with disabled employees and defending claims of disability discrimination under the Wisconsin Fair Employment Act (WFEA).

## **BACKGROUND**

Susan Catlin supervised three workers as the head of Crystal Lake's Wholesale Department. Crystal Lake cross-trained each worker, including Catlin, to perform the Department's duties. After a car accident, Catlin became a quadriplegic and for some time was unable to work. When Catlin sought reinstatement, Crystal Lake hired a consultant to evaluate whether her return would be feasible. The consultant determined that Catlin could not perform all the duties of her job, thus, Crystal Lake did not reinstate Catlin. Catlin filed a disability discrimination charge with the Wisconsin Equal Rights Division under the WFEA. She alleged that Crystal Lake could have eliminated most of the physical aspects of her position as a reasonable accommodation. She noted that members in her Department, which included her mother and sister, offered to perform the physical tasks that she could not perform. After a hearing, the Administrative Law Judge determined that Crystal Lake did not discriminate against Catlin.

Catlin appealed to the Labor and Industry Review Commission (LIRC). LIRC reversed, finding that it is reasonable to require an employer to restructure physical aspects of a job to accommodate an employee as long as the accommodation does not impose undue hardship on the employer. LIRC ordered Crystal Lake to reinstate Catlin, compensate her for lost income and benefits, and pay her reasonable attorney's fees and costs. After two unsuccessful appeals before the Circuit Court and the Court of Appeals, Crystal Lake sought review by the Wisconsin Supreme Court.

In a four to three decision, the Wisconsin Supreme Court agreed with LIRC and the lower courts' rulings. The Court found that a reasonable accommodation is not limited to one that allows the employee to adequately perform all of her job duties. Rather, reasonable accommodation may require exempting a disabled employee from some of her job duties, such as the more physically demanding tasks of Catlin's position. The Court held Crystal Lake should have allowed the other employees in Catlin's department to divide among themselves the physical tasks Catlin could no longer perform, noting the employees had volunteered to do so. In addition, the Court determined that Crystal Lake violated the WFEA by failing to engage in an "interactive process" with Catlin to determine a reasonable accommodation. The Court further held it was not an undue hardship for Crystal Lake to modify the job site at the cost of nearly \$50,000.

## **DISCUSSION**

As a result of the *Crystal Lake* decision, protection under the WFEA is broader than protection under the federal American with Disabilities Act (ADA). Under the ADA, employees must be able to perform all of the "essential functions" of their job with or without accommodation. Under the WFEA, however, employees must be able to perform some or most of their job duties. If Catlin sought relief under the ADA, her claim would have more than likely failed.

Although the remedies available under the ADA are more expansive than under the WFEA, the more liberal WFEA standards will result in more disability claims under the WFEA. This imposes a greater and more costly burden on employers. When employers are faced with disabled employees that cannot perform all of their job duties, employers will have to: (1) Engage in an "interactive process" with the employees; (2) Determine whether the employees can meet the requirements of their jobs with or without accommodation, including assessing whether they can adequately perform some or most of their job related tasks and whether other employees can take on the tasks they are unable to perform; and (3) Determine whether necessary accommodations are unreasonable or impose undue hardship. This process will probably require assistance from lawyers and other professionals, such as vocational experts, management consultants, or economists.

The *Crystal Lake* decision did not set forth a bright line test to determine when accommodations are unreasonable and/or impose undue hardship. Specific to the facts at issue, however, the Court determined that it was not unreasonable or an undue burden for Crystal Lake to modify the bathroom, doorways and aisles, build a ramp and lower the tables and fixtures to accommodate Catlin's disability, despite an estimated cost of nearly \$50,000. Similarly, the Court did not consider the time other employees would have to take to perform the tasks Catlin could not as unreasonable or unduly burdensome for Crystal Lake. Perhaps if Crystal Lake's financial condition were more dire, the cost to accommodate Catlin and the impact of lost employees' time to assist Catlin would have led to a different result.

The impact of the *Crystal Lake* decision changes the strategy that employers must take when dealing with disabled employees and defending disability discrimination claims. In addition, the decision opens the door for disabled applicants to bring discrimination claims when they are not hired because they cannot perform all of the duties sought. As issues arise with regard to accommodating disabled employees, please contact your attorney for assistance. The *Crystal Lake* decision is available for download at [www.vonbriesen.com](http://www.vonbriesen.com).

---

von Briesen & Roper Legal Update is a periodic publication of von Briesen & Roper, s.c. It is intended for general information purposes for the community and highlights recent changes and developments in the legal area. This publication does not constitute legal advice, and the reader should consult legal counsel to determine how this information applies to any specific situation.