

BARKER KOUMAS & OLMSTED

A PROFESSIONAL LAW CORPORATION

March 2006

Client Alert on Employment Law



Christopher Olmsted is a shareholder with the firm practicing business litigation and employment law.

He can be reached at (619) 682-4811 or via e-mail: cwo@barkerkoumas.com

Update: No Duty to Transform Temporary Light-Duty Position Into Permanent Position

By Christopher W. Olmsted

A California appellate court recently ruled that the “reasonable accommodation” requirements found in the ADA and the California Fair Employment and Housing Act (FEHA) do *not* require an employer to make a temporary light-duty position permanent. *Raine v. City of Burbank*, (2006)135 Cal. App. 4th 1215.

A police officer employed by the Burbank Police Department injured his knee on the job. The officer had difficulty running, jumping, kneeling and lifting, activities that were essential to perform the duties of a patrol.

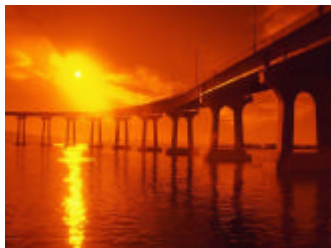
The Department reassigned the officer to a temporary light-duty position at the station’s front desk to accommodate him while his injury healed. The officer remained in that position for six years, when the Department was advised by the

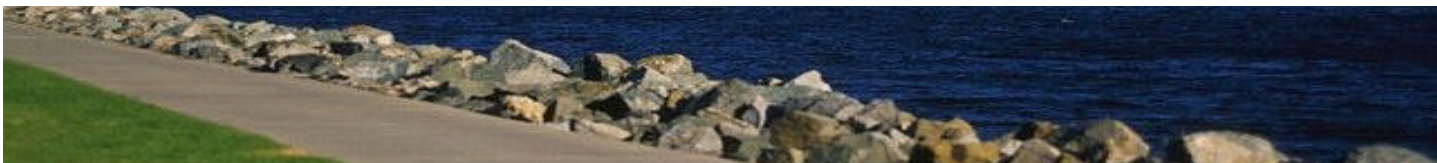
officer’s personal physician that his disability was permanent and he would never be able to perform the essential functions of a patrol officer.

Once the condition was deemed permanent, the Department arranged a job analysis, with input from the officer and his immediate supervisor, as part of the interactive process mandated by FEHA “to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.” The Department told the officer that it had no available position for a sworn police officer with his qualifications and physical limitations. The officer requested that as an accommodation, he be permanently assigned to the front desk position. However, the Department denied the request because

Have you signed up for our upcoming employment seminars?
In-House Workshops offered by Christopher Olmsted of Barker Koumas & Olmsted.

Business Law
Construction Law
Employment and
Labor
Litigation &
Insurance Defense
Trusts and Estates





the front-desk position was for officers recovering from injuries. The only persons working the front desk on a permanent basis were civilian police technicians, receiving less pay and fewer benefits than sworn police officers. The officer did not want the civilian position. Instead officer took a disability retirement. The officer filed suit alleging disability discrimination, failure to accommodate in connection with his removal from the front-desk position and his involuntary retirement from the Department. The trial court dismissed the claim in response to the Department's motion. The court of appeal upheld the trial court's decision. The court's ruling included the following conclusions:

- Under the ADA and FEHA, when a disabled employee is unable to perform the essential functions of the job even with reasonable accommodation, then:
 - The employer must determine whether it can accommodate the employee by transferring him or her to a vacant position for which the employee is qualified.
 - However, an employer has ***no*** obligation to ***create a new job*** as an accommodation for a disabled employee.
- Under the ADA and FEHA, an employer has no duty to create "light duty" positions as an accommodation for workers unable to perform the essential functions of the position for which they were hired.
- If an employer offers temporary "light duty" positions for injured workers, then temporary assignment of a disabled employee to the position may be a reasonable accommodation. However, the employer is ***not*** obligated to transform that accommodation into a ***permanent*** position once the employer is informed that the disability is permanent.

Employers who have light duty programs should consider the following points to ensure that they comply with disability laws:

- "Disability" has different meanings and implications under workers compensation and ADA/FEHA. The duty to provide reasonable accommodations under ADA/FEHA should be evaluated separately from workers compensation requirements. For example, a temporary non-chronic workplace injury might not qualify as a disability under ADA/FEHA.
- The creation of and assignment to light duty positions may make sense in the context of employees with workers compensation claims involving temporary partial disability.
- If light duty positions are created, they must be uniformly offered. Define the conditions under which an employee may be eligible for the assignment, and set reasonable time limits on how long the company will provide such assignments for injured employees who cannot perform the essential functions of their regular jobs.
- Refrain from creating new jobs or transforming temporary positions into permanent positions.
- Closely monitor the status of employee injuries, including (a) what job functions the employee may perform; and (b) whether the injury is temporary or permanent.

