

# **WHY DOCUMENTATION IS KEY: ANOTHER EMPLOYER WILL FACE A DISCRIMINATION TRIAL DUE TO FAULTY DOCUMENTATION**

**By Kevin J. O'Connor\***

I've written repeatedly on why few things play as important a role in reducing employment discrimination claims or shutting them down quickly as a clear and concise job description. In a unanimous decision of the New Jersey Supreme Court in *Grande v. Saint Clare's Health Systems*, A-67-15 (Solomon, J., July 12, 2017), it was a one-size-fits-all job description and inadequate medical documentation of workplace restrictions that resulted in the Court remanding the case for a disability discrimination trial.

The decision in *Grande* means that a former nurse at Saint Clare's Hospital will be allowed to go to trial on her claim that she was fired by the hospital based on a belief that she was physically unable to perform her job. The Court affirmed a majority ruling of a split Appellate Division panel that said existing issues of material fact should allow plaintiff Maryanne Grande to go to trial to show that she was fired for perceived disability even though she claimed that she had the physical ability to perform her job.

The employee had a history of on-the-job injuries arising from her work on unit that required a lot of work with stroke victims who were at risk for falling. According to the opinion, after a significant injury and time out of work, the employer required the employee to undergo a physical evaluation by an outside medical provider, who wrote a report that was essentially adopted by the employee's own physician and noted her inability to perform certain lifting tasks articulated in the report. However, according to the Court, the hospital had a one-size-fits all, generic job description for all nurses. Moreover, according to the Court, there was a total

disconnect between the stated lifting requirements of the position as reflected in the medical report, and what was contained in that job description. This, in large part, led to the case being remanded for trial. What is an "essential function" of a job is a fact issue, to be decided by a jury, the court said.

The *Grande* decision shows, again, that carefully documenting a termination decision is key. There should be no light between an employee's job description and any medical documentation used to justify a termination. Time has consistently shown that carefully drafted job descriptions are critical in all employment cases, not just discrimination cases.

Employers must view written job descriptions, carefully tailored for each position, as essential to the proper defense of employment claims. Job descriptions take time to create, but in the environment that employers find themselves, no company can afford not to spend time on this area. Whether an employer is looking at hiring someone, is evaluating an employee for compensation decisions, or is evaluating an employee for a termination decision, having a clear, concise, accurate and up-to-date job description is essential.

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