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EDITOR-IN-CHIEF:

Vito A. Gagliardi, Jr.
 973.889.4151
vagagliardi@pbnlaw.com

PORZIO EMPLOYMENT LAW ATTORNEYS:

Phillip C. Bauknight
 Frank A. Custode
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Consistent Application Of Zero Tolerance Drug Policy Trumps Wrongful Termination Claim

By Frank A. Custode, Esq.

In *Martin, et al. v. Quick Chek Corporation, et al.*, Docket No. A-2637-10T2 (January 18, 2012), the New Jersey Appellate Division affirmed a trial court decision granting summary judgment in favor of Quick Chek Corporation ("Quick Chek") and denying the subsequent motion for reconsideration in a wrongful termination action filed by plaintiff Erik W. Martin ("Martin"), who suffers from Parkinson's disease. In so doing, the Appellate Division held that Quick Chek's consistent application of its zero tolerance drug policy constituted a legitimate, non-discriminatory basis for its decision to terminate Martin's employment. Additionally, the Appellate Division found that Martin did not establish a failure to accommodate claim since Quick Chek honored his request for a demotion. This decision demonstrates not only the importance of having employment policies, such as drug abuse policies, but the importance of administering the policies in a consistent manner. In addition, this decision underscores that an employee cannot make a request that may be construed as an accommodation request, and then cry foul when the company honors the employee's specific request.

Factual Background

In March 1999, Quick Chek hired Martin as an assistant manager. In the summer of 2000, Martin was promoted to store manager on the recommendation of Supervising District Leader John Ferry. That same year, Martin was diagnosed with Parkinson's disease. Martin subsequently notified Ferry about the illness, and was advised to keep his illness "hush, hush." Thus, Martin never mentioned his illness to any other members of Quick Chek's management team, including Robert Grayczek, Quick Chek's Vice President of Human Resources.

In 2004 and 2006, Martin missed time from work due to two mini-strokes. In 2007, Martin took a two-week leave of absence because of depression. In each instance, Martin returned to work without any repercussions.

In March 2008, however, Martin requested and received a demotion to assistant manager because his medical condition essentially precluded him from satisfying his work obligations. On March 17, 2008, Martin injured his back at work. As a result, Martin's physician advised him to take a darvocet without a prescription and prescribed percocet to manage his pain.

At the time of Martin's injury, Quick Chek had a strict drug abuse policy in effect, which required any employee injured at work to submit to a drug test. On March 19, 2008, Martin took the required drug test at the testing facility. At the time the facility administered the test, Martin advised about his prescriptions as well as the darvocet he ingested on the date of the injury. Because Martin tested positive for darvocet without a prescription, the testing facility reported a failed drug test to Quick Chek. As a result, on March 26,

2008, Quick Chek terminated Martin's employment. Martin subsequently filed suit, alleging wrongful termination and disability discrimination under the New Jersey Law Against Discrimination ("LAD").

Consistent Administration of Zero Tolerance Drug Abuse Policy Constitutes A Legitimate, Non-Discriminatory Basis For Termination

At his deposition, Grayczek testified that, as Vice President of Human Resources, his decision to terminate Martin was based solely on the failed drug test. Additionally, Grayczek testified that in his 13 years managing human resources, the company never made an exception to its zero-tolerance drug abuse policy. Furthermore, he testified that he was unaware of Martin's Parkinson's disease until the litigation began.

This testimony proved to be crucial, as the trial court granted Quick Chek's motion for summary judgment, finding that Martin did not produce "any evidence that Quick Chek applied the store policy [regarding drug testing] selectively or that his positive drug test would have been ignored if not for the Parkinson's disease." On appeal, the Appellate Division affirmed the trial court's determination, finding that Quick Chek terminated Martin's employment pursuant to an extremely strict drug test, and that Martin failed to demonstrate that Quick Chek's stated reason for the termination (*i.e.* Martin's failed drug test) was a pretext for discrimination in light of Quick Chek's "unrelenting enforcement of the company's drug policy to reach such a conclusion."

Employee Cannot Succeed On Failure To Accommodate When Employer Honors The Employee's Specific Request

In his subsequent motion for reconsideration, Martin, for the first time, alleged that Quick Chek failed to accommodate his disability. The trial court dismissed that claim as well, determining that Martin "cannot now claim that defendant violated his rights by promptly doing exactly what he asked them do," which, in this case, was a request for a demotion to assistant manager. In affirming the trial court's decision, the Appellate Division noted that it was unaware of any "legal precedent to support his [Martin's] argument that defendants' awareness of his Parkinson's diagnosis triggered a legal obligation on their part to disregard his explicit request for a demotion and offer an accommodation that would allow him to maintain his manager position."

Practical Tips

In light of this decision, we recommend the following:

- As an employer, you should make sure you have clear and unambiguous employment policies that allow you to take the appropriate employment action if there are violations of the policies.
- Administer and apply the policies in a clear and consistent manner. If employers deviate from their stated policies, the policies themselves are essentially rendered meaningless.
- Have clear, open and documented dialogue with employees. As an employer, there should be no ambiguities regarding whether an employee is actually making a request for an accommodation. All changes in employment positions, as well as the stated reasons for the changes, should be documented and acknowledged in writing by the employee at issue to avoid any confusion that may arise in a subsequent litigation.