

Client Alert **Employment & Labor**

Discrimination Claims Based on *Perceived Disability* Now More Difficult to Defend in New Jersey

An employer that assumes an employee is unable to perform a job based either on his or her physical limitations or on that individual's past history of serious injuries may put itself in legal peril.

On July 12, 2017, the New Jersey Supreme Court, in *Grande v. Saint Clare's Health System*, held that a long-term registered nurse who was terminated due to the employing hospital's belief that she would be unable to perform her job satisfactorily because of a recent injury was entitled to pursue her disability discrimination claim at trial.

After suffering a series of work-related injuries, MaryAnne Grande was cleared by her physician to resume full-time work. Before reinstating her, the hospital required the RN to undergo testing by an outside evaluator to determine her ability to perform a variety of physical tasks. The evaluator's report recommended that Ms. Grande be limited to bearing no more than 16 pounds from waist to chest. The hospital subsequently terminated her based on its conclusion that her physical limitations would prevent her from doing her job.

In reversing the trial court's grant of summary judgment, the Court reaffirmed that an employee who is perceived to have a disability is as protected against termination under the NJ Law Against Discrimination as someone "who actually has a disability,"

J u l y
2017

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and that an employer may not terminate an employee with an actual or perceived disability unless the disability “reasonably precludes the performance of the particular employment.”

The Court stated that if the hospital believed Grande’s perceived disability precluded her from performing as an RN, it would need to base its opinion on an objective standard supported by factual evidence, not upon “general assumptions about Grande’s disability.”

The Court ruled that a trial should be conducted to resolve existing issues of fact as to whether (i) the lifting standards identified by the evaluator were actually required of Grande’s position, (ii) Grande’s periods of absence from work were sufficiently “chronic and excessive” to preclude her from demonstrating that she was actually performing her job at the time she was terminated, and (iii) by reason of her perceived susceptibility to injury, Grande presented a risk of injury to herself or patients had her employment continued.

Important Takeaways to Avoid Potential Disability Discrimination Liability

In light of the *Grande* decision, employers are reminded to:

- » Avoid making employment decisions based on a perception that an employee is disabled and, by reason of same, cannot perform a job.
- » Never assume that an employee with a history of serious on-the-job injuries will pose a risk to the employee’s personal safety or to the safety of others if his/her employment continues.
- » Base all decisions involving employees with a history of disabilities or who are perceived to be disabled on objective and demonstrative facts and not on generalized assumptions or opinions.
- » Carefully evaluate all of the relevant facts with the assistance of competent legal counsel before terminating any employee on the premise that he/she will be unable to perform a job because of an actual or perceived disability.

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The following attorneys in our Employment and Labor Law Practice Group can assist employers regarding the issues raised in this alert or other employment and labor issues.

David I. Rosen, Esq.

Client Alert Author and Chair, Employment and Labor Practice Group
drosen@sillscummis.com | (973) 643-5558

Galit Kierkut, Esq.

Client Alert Editor; Member, Employment and Labor Practice Group
gkierkut@sillscummis.com | (973) 643-5896

Charles H. Kaplan, Esq.

Member, Employment and Labor Practice Group
ckaplan@sillscummis.com | (212) 500-1563