

# EMPLOYMENT NEWS ALERT

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Brian E. Curtis, Esq.

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## *Light-Duty Assignments - Reasonable Accommodation The NJ Family Leave Act*

The NJ Supreme Court last year clarified its position on light-duty assignments as a reasonable accommodation for a temporarily-disabled employee and has further addressed the oft-times problematic issue of an employer's obligations to continue the accommodation when the disability becomes permanent.

In this issue of *Employment News Alert*, we are re-visiting this topic in view of the NJ Legislature's recent enactment of the "paid leave" provisions under the NJ Family Leave Act and the NJ Temporary Disability Benefits statute and its interplay with how our Courts interpret disability discrimination lawsuits.

A summary of the substantive view of the Court in rendering its opinion in *Raspa, Jr. v. Gloucester County Sheriff's Office*, 191 N.J. 323 (2007) is as follows:

### Temporary light-duty assignment to reasonably accommodate a temporary disability

The need for light-duty assignments as a way for an employer to reasonably accommodate an employee's temporary disability typically arises in manual labor and public safety jobs, where a physical injury, work-related or not, temporarily interferes with the employee's ability to perform the essential functions of his/her job. Under the NJ Law Against Discrimination (LAD), an employer must enter into an "interactive process" with the injured employee who is requesting a reasonable accommodation and must consider re-assigning the injured employee to light-duty work to accommodate the injury.

In the past, employers have often been confronted with the daunting task of trying to determine first the availability of such light-duty work, second the ability of the injured employee to actually perform this light-duty work, and third the restructuring of the injured employee's department when the injury and resultant disability is deemed to be permanent. In this way, an employer could work to avoid a possible claim of violation of the LAD for failure to accommodate disability.

In *Raspa, Jr.*, the Supreme Court determined that "an employee must possess **bona fide occupational qualifications** for the job position that the employee seeks to occupy in order to trigger an employer's obligation to reasonably accommodate the employee to the extent required by the LAD. In that context, we further hold that an employer may reasonably limit light duty assignments to those employees whose disabilities are temporary, and that the availability of light duty assignments for temporarily disabled employees does not give rise to any additional duty on the part of the employer to assign a permanently disabled employee indefinitely to an otherwise restricted light duty assignment." 191 N.J. 323, 327.

Hence, temporary light duty work can be used to temporarily accommodate a disabled employee who is qualified to do such work, and no employer is required to continue light duty assignments indefinitely.

As is the nature of the law, however, the answer to one question invariably leads simply to ever more questions such as -

1. how to determine a particular injured employee's qualifications,
2. how to classify certain assignments as light duty, and
3. how to decide when to end such assignments?

***WHAT CAN YOU DO RIGHT NOW FOR YOUR COMPANY?***

*Don't get caught short!* Reach out to your GCs and your HR managers NOW and find out what your Company's obligations are! Now that the Legislature has enacted the paid leave amendments to the NJ Family Leave Act (FLA) and the NJ Temporary Disability Benefits statute, to take effect on July 1, 2009, it is imperative to look now at how companies can implement paid leave for ALL employees state-wide, including temporarily-disabled workers and those on *light-duty* assignments. Check your policies now í fines and penalties for violations of these new provisions may be high!

We have the tools and the expertise to help your HR departments draft and implement policies that will ensure your Company is protected. ***CALL US NOW! WE CAN HELP!***

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If you would like additional information on the topics detailed in this issue, or any prior issues, of Employment News Alert, or otherwise need assistance and advice on any employment matter, please call or email as follows:

**Brian E. Curtis, Esq.**  
(732) 277-8261  
[becurtis@strykertams.com](mailto:becurtis@strykertams.com)

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