

# WASHINGTON CASE UPDATE

## Is Respiratory Sensitivity to Mold Considered a Disability?

**From the desk of John Kreutzer: Can an individual's respiratory problems resulting from mold or other potentially toxic substances constitute a disability under Washington's Law against Discrimination (WLAD)?**

**Claims Pointer: The Court of Appeals held that an employee's respiratory difficulties as a result of mold could constitute a disability. The takeaway from this case is that the term "disability" as defined by statute is a broad term that can encompass various sensory, mental or physical impairments. In this case, the Court reasoned that Hartman's respiratory problems could constitute a physical impairment that substantially limited her ability to perform her job. This case stresses the importance of acting promptly to accommodate a potentially disabled worker.**

case in point...

Hartman v. YMCA, No. 71765-1-I, Court of Appeals of Washington, Division I (Nov. 9, 2015).

In May 2012, two months after Sara Hartman (Hartman) was hired as an assistant teacher at the Dale Turner Family Child Development Care Center (CDC), located in a North Seattle branch of the Young Men's Christian Association (YMCA), she began experiencing symptoms as a result of mold exposure. Hartman experienced daily headaches, coughing, burning eyes and sinus and chest burning. She suspected mold in the CDC's HVAC system and enlisted her husband, a licensed HVAC specialist, to inspect. Peter Hartman located mold and informed Sarah Morris, the Regional Senior Program Director of Childcare for the YMCA, of his findings as well as how to resolve the moisture issue. Bob Haskell, the senior building engineer, investigated the HVAC and attempted to install new parts for the system, but was prevented due to classes in session.

By early August, more staff and children complained of negative health effects. Peter was again retained to perform an inspection of the HVAC system and discovered many of the same problems remained. Peter sent an email to CDC management listing all the issues, which was then forwarded to the head of maintenance. Around this same time, YMCA attempted to fix the problem through cleaning, vacuuming and replacing filters. On August 13, Hartman emailed Morris and left a voicemail message reporting that several students had

recurring health problems that may be related to mold exposure. She further communicated her doctor's determination that her symptoms were likely due to mold exposure, that she should avoid the contaminated area and was referred to a specialist. On August 14, Hartman emailed Morris again, this time reiterating her doctor's diagnosis that her symptoms were related to exposure to an airborne contaminant and that she was not comfortable working at CDC or bringing her child there until the HVAC issue was resolved. Morris also received written complaints from three other employees regarding health concerns.

On August 15, following Hartman's requested accommodation, Morris placed Hartman on a Performance Improvement Plan due to an alleged incident between Hartman and HVAC maintenance workers. During a meeting regarding the plan, Morris apparently said there was no mold and that it was resolved.

On September 6, 2013, Hartman resigned from the CDC and subsequently sued the YMCA, alleging disability discrimination for failure to accommodate, retaliation and wrongful constructive discharge. The trial court granted YMCA's summary judgment motion dismissing Hartman's claims. Hartman appealed.

The Court of Appeals held that summary judgment was inappropriate in this case where a jury could reasonably find that Hartman suffered from a physical abnormality or impairment that substantially limited her ability to perform her job. In addition, the Court



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found that there was circumstantial evidence from which a jury could reasonably infer that Hartman communicated her health concerns to the YMCA as early as June, thereby satisfying the notice requirement for a discrimination claim. Finally, the Court reviewed the duty to reasonably accommodate and indicated that while the YMCA may have taken some remedial steps to cure the mold problem, additional contrary evidence was provided indicating YMCA believed the mold issue was resolved and ceased further attempts to accommodate. According to the Court, taking some remedial steps does not shield the employer from liability. To avoid liability, the employer would need to show it engaged in a good faith interactive process with the employee to accommodate their disability.

The trial court's ruling to grant summary judgment to YMCA was reversed and remanded.

**NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case.**



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