



December 2023

Precedent-Setting Decision of the National Labor Court: Enhanced duty of an employer to make efforts to accommodate an employee with disabilities, facilitating the employee's continued employment

Dear Clients,

Below is a summary of an important judgment which the National Labor Court handed down on October 5, 2023, (Labor Appeal (National) **43951-09-22** Albert Cohen v. Amdocs (Israel) Ltd). The judgment outlines the employer's duty to make accommodations for the sustained employment of an employee whose health has deteriorated, resulting in them becoming "a disabled worker" as defined under law.

The Facts of the Case

The employee, a programmer at the company since 1997, suffered a heart attack in 2008, which was recognized as a work-related injury. As a result, the employee was left permanently disabled at a rate of 24%. Upon returning to work in 2009, he needed specific accommodations due to his medical condition and that of his spouse, also recognized as disabled.

In 2017, amidst departmental cutbacks and layoffs, the employee experienced another medical incident, after which his work capacity was assessed as 50% lost. Upon his return, he was not reassigned to any position. Eventually, after the company failed to find an alternative role, the employee was invited to a hearing, after which he was terminated.

The employee filed a lawsuit claiming that the company violated the Equal Rights For Persons With Disabilities Law, 5758-1998 (the "**Law**"), by not providing necessary accommodations for his continued employment, despite his disability.

The Regional Labor Court rejected the employee's claim in its entirety. However, on appeal, the National Labor Court granted it in part.

The National Labor Court's Judgment

The court divided the employee's period of employment into two different periods and defined the employer's obligations during each period:

The First Period: The employee's return to work in 2008 following his heart episode.

The court determined that the employee's health issues did not classify him as a "person with disabilities", partly because he failed to provide medical documentation demonstrating a functional impairment which impacted his principal spheres of life.

Additionally, the court found that the doctor's recommendations that the employee to avoid overtime hours, reduce work stress, and refrain from international flights did not constitute a "substantial or significant functional impairment to a principal sphere of life," and, therefore, he should not be deemed to be a "person with disabilities".

Furthermore, the court stated that an employer is obligated to inquire about any special needs an employee might have after returning from sick leave due to health conditions, and to respond to these needs reasonably.

The employer also needed to consider the employee's personal circumstances and potential difficulties in finding alternative employment. The employer throughout was subject to the duty to act in good faith. In this case, the court concluded that the respondent met these obligations during the First Period.

The Second Period - When the employee returned to work after the occupational physician determined his work capacity was limited to 50%.

During this period, the court acknowledged the employee's status as a "person with disabilities." Consequently, the employer faced an enhanced duty, beyond merely making efforts.

Under this duty, the employer was obligated to reassess, while demonstrating flexibility in its thinking, and to modify, if necessary, the accepted practices at the workplace to facilitate the full integration of the disabled employee. The court emphasized that when an employee presents a restriction endorsed by an occupational physician, the employer is obligated to fulfill the endorsement and to reintegrate the employee into their role accordingly. In this process, the "employer is subject to the duty to make accommodations, as necessary, willingly and in an active and creative manner, and with the employee's cooperation."

The court explained that the enhanced duty incumbent upon the employer was a positive and active obligation to establish conditions facilitating the employee's employment. The court offered examples of such employer accommodations:

- (a) A comprehensive search for relevant job positions;
- (b) Modifying and restructuring the demands of the position;
- (c) Introducing flexibility in work hours by dividing them differently;
- (d) Making *ad hoc* exceptions to established work procedures;
- (e) Creatively considering adaptations to positions that may initially seem unsuitable, such as offering a part-time role in a position originally designated as full-time;
- (f) Creating a new role at the rate of 50% of a full-time position combining tasks previously distributed among multiple employees;

(g) Providing short-term professional training for the employee to facilitate placement in a suitable position, provided it is not too burdensome;

(h) Engaging a professional specializing in integrating persons with disabilities into the workplace, if necessary.

The court concluded that there was a wide range of possibilities in making accommodations and that the only qualification to this was that such accommodations should not impose an undue burden on the employer.

In the case at hand, the court found that the employer failed to sufficiently accommodate or find an alternative position for the employee during the Second Period.

However, the court reduced the compensation awarded to the employee, considering the employee's lack of cooperation with the employer's efforts to find an alternative position, and the low likelihood of finding such a position under the given circumstances. Consequently, the court awarded the employee compensation of NIS 50,000.

We are available for any questions you have, and we would be happy to assist you.

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