

Guidelines for the Implementation of the Foresta Decision

Responsibilities of the retirement boards:

What should retirement boards do in light of this decision?

The retirement boards should make the following inquiries upon receipt of an application for ADR. Please note: **Only if all of the following five questions are answered in the affirmative would it be appropriate to forward the modified job description to the Medical Panel, and rely on the modified job description in deciding whether an accidental disability retirement should be granted in a specific case.**

1. Has the employee been absent from his position by reason of an injury suffered as a result of and while in the performance of his duties?
2. If yes, has this absence been in excess of 30 days?
3. If yes, in the Board's view, has the employer fulfilled its responsibilities, and provided medical and vocational intervention and accommodation pursuant to G.L. c. 32, § 5B?
4. If yes, have the job duties of the position been modified?
5. If yes, are the essential duties of the job as modified are similar in responsibility and purpose to those performed by the employee at the time of injury, resulting in no loss of pay or other benefits?

Responsibilities of the employer:

In keeping with the SJC's decision, if an employer has not provided medical and vocational accommodation they must either do so, or explain why it is not feasible to do so. Thus, if question number 3 is answered in the negative, the retirement must contact the employer and inform it of its obligations in this regard.

The original job description:

If a modified job description should be utilized by the Medical Panel in light of the criteria set out above, it would also be appropriate, in the Commission's view, to forward the original job description to the Medical Panel as well.

The Employers' Statement

In light of the Foresta decision, the Commission will review its Employer's Statement form and see if any changes need to be made. In its present form, there is one question addressed to the employer about modification of job duties (p. 3, question 3) and one question that asks if the employee has requested modification. (p. 3, question 2.) Unless and until any changes are made to this form, employers should answer these two questions in as thorough a manner as possible, and retirement boards should make certain these questions have been sufficiently answered.

The Commission's Section 21(1)(d) Review

Whether the Employer's Statement is ultimately altered or not, the Commission will use its review authority pursuant to Section 21(1)(d) to assure that employers and retirement boards are complying with the decision in Foresta. The decision was published on April 24, 2009 and will apply to all accidental disability retirement applications filed on or after that date.

Education and Distribution

The more employers know about this decision, the less likely it is that a case delayed or derailed by the failure of employers to fulfill their obligations under Foresta.

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