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EMPLOYER HELD LIABLE FOR FAILING TO NOTIFY SUPERVISOR OF ACCOMMODATION PROVIDED TO DISABLED EMPLOYEE

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California and federal law require employers to offer reasonable accommodations to employees with disabilities. A recent California Court of Appeal decision, *A.M. v. Albertsons, LLC*, demonstrates that it is just as important to inform supervisors of accommodations that have been afforded.

The plaintiff in the *Albertsons* decision was a cashier in the store's deli department. She had received chemotherapy and radiation therapy for cancer of the tonsils and larynx. The treatments affected her salivary glands, requiring her to drink large amounts of water every day. As a result, she had to urinate frequently. The store accommodated the plaintiff's condition by allowing her to have water at her checkstand and by telling her to inform her managers whenever she needed a break to use the restroom.

During one shift, the plaintiff was working with a manager who was unaware of the plaintiff's condition or the accommodations that the store had agreed to provide her. The manager declined the plaintiff's request for a restroom break, because the manager was busy unloading merchandise and could not tend the register at the time. The plaintiff urinated in her clothes while still standing at the checkstand. The plaintiff claimed that she suffered emotional trauma as a result, requiring her to undergo months of psychiatric treatment during which she was unable to return to work.

The jury awarded the plaintiff \$200,000 in damages. It concluded that she was "unusually susceptible to emotional distress injuries" because she spent her childhood in war-torn El Salvador. The appellate court affirmed the jury's award, even though the plaintiff failed to inform her manager of her disability or that Albertsons had agreed to accommodate it by allowing her to take frequent restroom breaks. The appellate court rejected Albertsons claim that it should not be held responsible for a single incident, even though it had accommodated the plaintiff's needs for more than a year. Furthermore, the appellate court held that although Albertson's had offered the plaintiff a reasonable accommodation of her disability, it failed to engage in an ongoing "interactive process" designed to ensure that its accommodation continued to meet the employee's needs.

The Court of Appeal faulted Albertsons on two main grounds. First, the store failed to follow its own written guidelines for its disabled employees. Instead, Albertson's dealt with the plaintiff's condition on an *ad hoc* basis. Second, the store failed to document the accommodations it had agreed to provide so that all store managers could be notified of them.

Conclusion. The *Albertson* decision shows that even well-intentioned employers face liability if they fail to implement – and follow – written policies for dealing with the needs of disabled employees.