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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0496-21**

MIRIAM LAX,

Plaintiff-Respondent,

v.

HACKENSACK MERIDIAN  
HEALTH, INC., and  
ANNAMARIE CUTRONEO,

Defendants-Appellants.

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Submitted November 28, 2022 – Decided April 20, 2023

Before Judges Currier and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law  
Division, Ocean County, Docket No. L-0315-19.

Ferrara Law Group, PC, attorneys for appellants (Aaron  
L. Peskin, of counsel and on the briefs)

Greenberg Traurig, LLP, attorneys for respondent  
(Kristine J. Feher, on the brief).

PER CURIAM

Plaintiff Miriam Lax appeals from a September 24, 2021 order granting summary judgment to defendants Hackensack Meridian Health (HMH) and Annamarie Cutroneo. Based on our de novo review of the summary judgment record, we affirm.

## I.

We summarize the following facts from the record, viewing "the facts in the light most favorable to [plaintiff,] the non-moving party." Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016) (citing R. 4:46-2(c)).

### A. Employment with JSUMC

Plaintiff, an Orthodox Jew, began her employment with Jersey Shore University Medical Center (JSUMC), a hospital within the HMH healthcare system, as a secretary in the Case Management Department in 2009. In 2010, she was promoted to Specialty Patient Liaison in the Office of Patient Experience<sup>1</sup> and remained as the only liaison until 2018. Plaintiff was responsible for acting as a JSUMC liaison for patients and families, with a "special obligation to advocate for members of the Orthodox [Jewish] community." She testified she was "always on call" because she was routinely

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<sup>1</sup> According to the motion record, the Office of Patient Experience is a "unit dedicated to working with patients and families, and particularly patients and families from specialty communities, to ensure HMH is meeting their needs."

required to visit Orthodox Jewish patients throughout JSUMC. Additionally, plaintiff claimed her position was "never the sort of job where [she] was expected to remain at her desk throughout her shift."

In March 2018, the Office of Patient Experience was reorganized and restructured due to HMM's corporate merger. As a result, in July 2018, Cutroneo became Vice President of the Office of Patient Experience and Hospitality as well as plaintiff's supervisor. The restructuring objective was to standardize roles across HMM network hospitals. Consistent with that objective, job titles and responsibilities related to patient experience were consolidated into two primary positions: Experience Advisor and Experience Ambassador.<sup>2</sup> All team members in the Office of Patient Experience assisted patients of any religious or cultural background, including members of the Orthodox Jewish community.

After considering the roles and responsibilities within the department, defendants determined plaintiff's role of Specialty Patient Liaison was like that of the Experience Ambassador position. JSUMC crafted the title of Specialty Experience Advisor for plaintiff; she was the only employee to hold that

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<sup>2</sup> Experience Advisor was the higher-level position and entailed responsibilities such as coordinating across hospital departments and investigating patient complaints. Experience Ambassador was a lower-level role focused on visiting with patients to address concerns and reporting complaints or issues to Advisors.

particular title. At the same time, plaintiff "aggressively" sought a promotion and salary increase amid the reorganization.

On June 12, 2018, Katie Luciani, Human Resources Site Manager at JSUMC, provided plaintiff with a copy of the new job description for the Specialty Experience Advisor position for her consideration. In summary, the position provided service roles including, but not limited, to: the Ombudsman for patients and family members applying patient rights and ensuring compliance with regulatory, federal and state guidelines; acting as an expert for the cultural and religious needs for specialty communities; a liaison between members of the cultural and religious communities and JSUMC to increase visibility and foster cultural sensitivity; and as a role model, coach, and educator in all matters related to patient rights, service excellence, and patient satisfaction. The Specialty Experience Advisor supported the Experience Ambassador and Advisor as needed.

On June 15, 2018, plaintiff received an offer letter which identified the new title of Specialty Patient Experience Advisor and salary increase. Plaintiff's work hours were modified from 8:00 a.m. to 4:30 p.m. to 8:30 a.m. to 5:00 p.m. After receiving the job description, she did not raise any concerns about her modified work hours or request any adjustment to her schedule.

During the next three months, plaintiff continued to exclusively focus her efforts on Orthodox Jewish patients. In September 2018, Cutroneo clarified HMH's expectations and restated plaintiff "had an obligation to provide service to everyone regardless of their faith base." She responded, "No problem."

Cutroneo testified during her deposition that she frequently observed plaintiff was not at her desk during work hours, did not have personal effects, such as her purse or jacket, in her desk area, and did not appear to be on site. Cutroneo's impression of plaintiff's frequent absences was confirmed by others in the Patient Experience department. Cutroneo also stated plaintiff never requested nor was granted remote work. Based on her job description, plaintiff was expected to be present during the designated work hours. Despite numerous requests to share her Outlook work calendar, plaintiff failed to share her schedule with Cutroneo or other team leaders.

On October 4 at approximately 8:10 a.m., Michael Rafter, Volunteer Services and the Switchboard manager, e-mailed all Patient Experience Team members notice of a 9:00 a.m. team "huddle"—meeting with all members. Plaintiff responded, "she would be there as soon as she could." Nonetheless, she failed to attend the huddle or notify her supervisors that she would not

attend. Plaintiff arrived at work at 9:45 a.m., more than one hour after her start time and nearly one hour after the huddle.

Plaintiff explained to Rafter that she was late to the huddle because she attended another meeting in the hospital. Rafter notified Cutroneo of plaintiff's explanation regarding her absence from the huddle.<sup>3</sup> Cutroneo learned from a medical intensive care unit nurse leader that there was no meeting in the location within the hospital as represented by plaintiff.

The same day, Cutroneo requested a copy of plaintiff's identification badge swipes report from the JSUMC's Security team. Later that afternoon, Cutroneo received the badge swipe report for the period of August 1 through October 4, 2018. The report revealed that on the morning of October 4, plaintiff's first swipe was at an entry door to JSUMC at 9:39 a.m.

Additionally, the badge swipe report revealed that on every morning for the prior two months, except for October 4, plaintiff's first badge swipe of the day generally occurred at approximately 11:00 a.m. And the last swipe of the day was often between 4:00 and 5:00 p.m.

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<sup>3</sup> At her deposition, plaintiff first claimed she did not remember what she was doing or why she could not attend the huddle. She later testified she had been attending to a patient in the intensive care unit.

Following a review of plaintiff's badge swipe report, Cutroneo contacted Lisa Huisman, Team Member Labor Relations Manager, and Luciani to discuss the preliminary investigation regarding plaintiff. Cutroneo was advised by both Luciani and Huisman to address plaintiff's huddle absence and overall attendance.

The next morning, Cutroneo e-mailed plaintiff to meet at 8:30 a.m. Approximately five minutes before the scheduled meeting, plaintiff informed Cutroneo that she had a scheduling conflict and was unable to meet at the scheduled time. Plaintiff and Cutroneo met later that day. During the meeting, Cutroneo questioned plaintiff about her absence from the huddle on October 4 and why she was unable to meet earlier that morning. She claimed that she was in meetings in JSUMC on both mornings. She also explained that she had a "very fluid schedule" or sometimes she took calls in the morning from home and did not leave until after she "handled" those issues. Plaintiff admitted she never received authorization to work remotely.

Cutroneo informed plaintiff that her inability to report to work during her scheduled hours over the preceding months was a serious offense and that Cutroneo was informing Human Resources of the issue and she could be subject

to disciplinary action. Plaintiff asked Cutroneo not to contact Human Resources and said she would "fix" the problem.

After meeting with plaintiff, Cutroneo reported her findings to Luciani and Huisman. They reviewed the badge swipe report, along with Cutroneo's findings, and determined that discipline was warranted.

On October 9, 2018, pursuant to HMH's Guidelines for Cooperation and Discipline (Guidelines),<sup>4</sup> plaintiff was disciplined for a Level II infraction for "[f]alsification of any [HMH] document or record including but not limited to time records, applications, patient information, and work-related documents" and "[a]ny act or conduct which is seriously detrimental to patient care or interferes with performance of work functions." A three-day suspension was imposed, and a disciplinary review hearing was scheduled.

#### B. Disciplinary Review Hearing

The discipline hearing was held on October 11, 2018 with plaintiff, Luciani, Huisman, and Cutroneo in attendance. At the hearing, plaintiff acknowledged that her offer letter listed her on-site hours as 8:30 a.m. to 5:00

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<sup>4</sup> The Guidelines identify two levels for infractions: Level I for less serious discipline which leads to a progressive warning process and "may lead up to the final step of termination"; and Level II for "gross infractions [which] will result in suspension without pay pending investigation and a disciplinary review meeting."



p.m. She also acknowledged that there were instances where she arrived to work late but claimed that because of Epstein-Barr syndrome, she had trouble getting to work on time. This was the first time plaintiff informed Cutroneo that she was diagnosed with Epstein-Barr. Following the disciplinary review hearing, plaintiff's suspension was upheld, and she was terminated for her gross misconduct.

### C. Administrative Appeal

Thereafter, plaintiff filed an administrative appeal. In response, Donna Ciufo, Vice President/Chief Nursing Officer, met with plaintiff on November 12, 2018. Ciufo asked plaintiff about her designated work hours and notification of leadership regarding her schedule. She responded that "she did her own thing for a long time and did not think she needed to let anyone know where she was." Plaintiff asserted she believed Cutroneo was biased towards the Jewish community. After having reviewed the discipline and underlying facts with plaintiff, Ciufo upheld the termination decision because "[Plaintiff] was unable to verify that she was actually in the building for the hours agreed upon in her hiring letter."

Following plaintiff's termination, the Specialty Experience Advisor position was eliminated. All team members continued to care for and played a

role in assisting with the Orthodox Jewish community and other specialty communities had done during plaintiff's employment.

On February 5, 2019, plaintiff filed a complaint in Superior Court asserting religious and disability discrimination in violation of the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 to -50.<sup>5</sup>

Defendants answered, discovery ensued, and defendants moved for summary judgment. In a cogent written decision accompanying a September 23, 2021 order, the motion judge granted defendants' motion. As to plaintiff's claim for religious discrimination, the trial judge concluded plaintiff presented "no competent evidence in the record from which a jury could reasonably infer that [she] was terminated because she is a member of the Orthodox Jewish community." The motion judge further concluded "[a] jury would have to speculate and find an ulterior motive, not supported by evidence, to conclude

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<sup>5</sup> Plaintiff asserted additional claims of intentional infliction of emotional distress, negligent infliction of emotional distress, breach of contract, breach of the implied covenant of good faith and fair dealing, and respondeat superior against HMH. Because plaintiff did not address any of her additional claims in her merits brief, all issues relating to these claims are waived. See N.J. Dep't of Env't Prot. v. Alloway Twp., 438 N.J. Super. 501, 505-06 n.2 (App. Div. ), certif. denied, 222 N.J. 17 (2015); Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2017).

her termination was based on something other than the reasons stated by her employer."

Regarding plaintiff's claim of failure to accommodate under the NJLAD, the trial judge found plaintiff did not "establish her employer was aware of the need for reasonable accommodation, a critical element necessary to maintain a claim for failure to accommodate under NJLAD."

As to the remaining counts, the trial judge found summary judgment "[was] supported for the reasons stated by the moving party. Plaintiff did not offer opposition on the remaining counts."

## II.

On appeal, plaintiff contends the trial court erred in accepting the proffered reasons for termination as true; and improperly requiring proof of direct evidence. Plaintiff also contends the trial court erred in dismissing her religious and disability discrimination claims. We disagree with these contentions.

We review de novo the grant of summary judgment to defendants, applying the same standard as the motion judge. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). That standard requires us to "determine whether 'the pleadings, depositions, answers to interrogatories and admissions

on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.'" Ibid. (quoting R. 4:46-2(c)). "To decide whether a genuine issue of material fact exists, the trial court must 'draw[] all legitimate inferences from the facts in favor of the non-moving party.'" Friedman v. Martinez, 242 N.J. 449, 472 (2020) (alteration in original) (quoting Igdaley, 225 N.J. at 480). We owe no deference to the trial court's legal analysis or interpretation of a statute. Palisades at Fort Lee Condo. Ass'n v. 100 Old Palisade, LLC, 230 N.J. 427, 442 (2017).

The NJLAD prohibits employment practices and discrimination based on, among other categories, an employee's "race, creed, color, national origin, ancestry, age, . . . sex, gender identity or expression, [or] disability." N.J.S.A. 10:5-12(a). An employer is liable for damages resulting from its practices or discrimination that violate the NJLAD. Woods-Pirozzi v. Nabisco Foods, 290 N.J. Super. 252, 267-68 (App. Div. 1996).

In analyzing such claims under the NJLAD, New Jersey has adopted "'the procedural burden-shifting methodology' set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04[] . . . (1973)." Meade v. Twp. of Livingston, 249 N.J. 310, 328 (2021) (quoting Zive v. Stanley Roberts, Inc., 182 N.J. 436,

447 (2005)); Tisby v. Camden Cnty. Corr. Facility, 448 N.J. Super. 241, 248 (App. Div. 2017).

Under that framework, "[a]ll employment discrimination claims require the plaintiff to bear the burden of proving the elements of a prima facie case." Victor v. State, 203 N.J. 383, 408 (2010). The plaintiff's "evidentiary burden at the prima facie stage is 'rather modest: it is to demonstrate to the court that plaintiff's factual scenario is compatible with discriminatory intent—i.e., that discrimination could be a reason for the [defendant]'s action[] . . . irrespective of [the] defendant['s] efforts to dispute [the plaintiff's] evidence.'" Meade, 249 N.J. at 329 (quoting Zive, 182 N.J. at 447-48). But "there is no single prima facie case that applies to all discrimination claims. Instead, the prima facie elements of a claim vary depending upon the particular employment discrimination claim being made." Victor, 203 N.J. at 409-10. Only after a plaintiff "successfully establishes a prima facie case" will a presumption arise "that the [defendant] unlawfully discriminated against the plaintiff." Grande v. Saint Clare's Health Sys., 230 N.J. 1, 18 (2017) (quoting Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 596 (1988)).

A. Disparate Treatment Based on Religious Discrimination Claim

In a religious discrimination case, a prima facie case includes a showing that "(1) plaintiff belongs to a protected class; (2) she was performing her job at a level that met her employer's legitimate expectations; (3) she suffered an adverse employment action; and (4) others not within the protected class did not suffer similar adverse employment actions." El-Sioufi v. Saint Peter's Univ. Hosp., 382 N.J. Super. 145, 167 (App. Div. 2005); Tisby, 448 N.J. Super. at 248.

If a plaintiff establishes a prima facie case, an "inference of discrimination" is created, and under McDonnell Douglas, "the burden of production shifts to the employer to articulate a legitimate, nondiscriminatory reason for the employer's action." Zive, 182 N.J. at 449 (first citing Furnco Constr. Corp. v. Waters, 438 U.S. 567, 577 (1978); and then citing Clowes, 109 N.J. at 596). "When the employer produces evidence of legitimate, nondiscriminatory reasons for the employment action it took, the presumption of unlawful discrimination disappears." Meade, 249 N.J. at 329 (citing Bergen Com. Bank v. Sisler, 157 N.J. 188, 211 (1999)). "Finally, '[i]n the third stage of the burden-shifting scheme,' the employee must 'prove by a preponderance of the evidence that the reason articulated by the employer was merely a pretext for discrimination and not the true reason for the employment decision.'" Ibid.

(alteration in original) (quoting Zive, 182 N.J. at 449). Plaintiff can prove pretext by using either "circumstantial or direct evidence that discrimination was more likely than not a motivating or determinative cause of the action" or plaintiff can discredit the legitimate reasons provided by the employer. El-Sioufi, 382 N.J. Super. at 173.

We now apply these principles, "limit[ing] our consideration as necessary to the motion record that existed" before the motion judge. Innes v. Marzano-Lesnevich, 435 N.J. Super. 198, 208 (App. Div. 2014) (citing Ji v. Palmer, 333 N.J. Super. 451, 463-64 (App. Div. 2000)), aff'd as modified, 224 N.J. 584 (2016).

We are convinced the motion judge appropriately determined plaintiff failed to satisfy the elements of religious discrimination. After analyzing whether plaintiff established a prima facie claim and using burden-shifting methodology, the motion judge found defendants "never posted or advertised" the position, "no recruitment efforts" were made, and no one was hired to replace plaintiff. Additionally, the motion judge further found, plaintiff "did not offer evidence to satisfy the fourth element of her prima facie case because HMH did not seek someone else to perform [p]laintiff's work." The judge concluded defendants' "stated reasons for termination, theft of time, was reasonable and

legitimate based on the evidence presented and course of conduct by JSUMC under the totality of circumstances."

Similarly, in analyzing plaintiff's disparate treatment claim, the motion judge relied on the burden-shifting framework as noted above. Plaintiff argues the motion judge overlooked plaintiff's identification as an Orthodox Jew and her association with Jewish patients is actionable under the NJLAD. She further contends the motion judge mistakenly conflated direct evidence with circumstantial evidence and overlooked direct evidence of animus toward Jewish patients.

The record does not support plaintiff's arguments. All JSUMC employees were expected to adhere to their designated work schedules. Moreover, in 2018 and 2019, HMM terminated four employees, irrespective of religion, for theft of time. Plaintiff has not presented any evidence to support a prima facie case that her termination resulted from her religion. Moreover, she testified in deposition that she had never raised any complaint of religious discrimination or bias by HMM or Cutroneo prior to her termination. The record is devoid of controverted facts "so that a factfinder could reasonably conclude [HMM's decision] was fabricated, or that allow[] the factfinder to infer that discrimination was more likely than not the motivating or determinative cause of the termination



decision.'" Crisitello v. Saint Theresa Sch., 465 N.J. Super. 223, 240 (App. Div. 2020) (quoting El-Sioufi, 382 N.J. Super. at 173).

Plaintiff's discrimination claim was not raised until she appeared for her administrative appeal. As noted by the motion judge, plaintiff "presented no evidence of disparate treatment." The motion judge specifically concluded there was "[n]o linkage. No derogatory comment by Annamarie Cutroneo or anyone at JSUMC to plaintiff concerning her religion. No conduct. Nothing."

Given the lack of evidence in the record, plaintiff failed to satisfy her initial burden under the McDonnell Douglas standard. We are satisfied no reasonable jury could find that plaintiff was terminated solely based on her religion or that defendants' reasons for terminating plaintiff were pretextual or motivated by discriminatory intent. Therefore, plaintiff's disparate treatment claim based on religious discrimination was properly dismissed.

B. Failure to Accommodate Based on Disability Claim

We are unconvinced by plaintiff's argument that defendants failed to provide a reasonable accommodation under the NJLAD. She asserts she requested an accommodation when she told Cutroneo she has Epstein-Barr syndrome.

To establish a failure-to-accommodate claim under the NJLAD, a plaintiff must demonstrate that he or she "(1) 'qualifies as an individual with a disability . . . ' ; (2) 'is qualified to perform the essential functions of the job, or was performing those essential functions, either with or without reasonable accommodations'; and (3) that defendant 'failed to reasonably accommodate [her] disabilities.'" Royster v. N.J. State Police, 227 N.J. 482, 500 (2017) (quoting Victor, 203 N.J. at 410).

It is well settled New Jersey courts have held that the NJLAD "requires an employer to reasonably accommodate an employee's handicap." Tynan v. Vicinage 13 of Superior Ct., 351 N.J. Super. 385, 396 (App. Div. 2002). However, an employer's obligation to accommodate an employee's disability is not without limits, and "the [NJ]LAD provides that an employer may lawfully terminate a disabled employee if the disability precludes job performance." Grande, 230 N.J. at 23 (citing N.J.S.A. 10:5-4.1).

The core of defendants' argument when they moved for summary judgment, reiterated in opposition to plaintiff's appeal, is that plaintiff was terminated for legitimate non-discriminatory reasons—theft of time. We are convinced defendants carried their burden "to articulate a legitimate, nondiscriminatory reason for [its] action," Zive, 182 N.J. at 449 (citing Clowes,

109 N.J. at 596). As noted above, the third stage of the burden shifting analysis requires consideration of plaintiff's proof that the stated reasons were pretextual. Ibid. (citing Clowes, 109 N.J. at 596).

Here, providing plaintiff as we must with favorable inferences from the evidence in the motion record, she has failed to carry her burden for purposes of defeating summary judgment. As the motion judge explained, "Plaintiff admitted she never notified her employer of her medical condition or request[ed] any reasonable accommodation at any time prior to the disciplinary review meeting." The motion judge reasoned "[p]laintiff cannot establish her employer was aware of the need for reasonable accommodation, a critical element necessary to maintain a claim for failure to accommodate under NJLAD."

On this motion record, plaintiff failed to show or explain how her Epstein-Barr statement raised during the disciplinary review hearing constituted a request for a reasonable accommodation. Plaintiff conflates the religious discrimination and the failure to accommodate claims in asserting if a jury found she was unlawfully terminated under the NJLAD, "it must then consider whether that unlawful termination also constitutes a failure to accommodate [plaintiff's] disability since she raised her diagnosis of Epstein-Barr at the disciplinary hearing." Under these facts, plaintiff cannot demonstrate that Epstein-Barr was

causally linked to defendants' decision to terminate her employment. See DeWees v. RCN Corp., 380 N.J. Super. 511, 528 (App. Div. 2005) (quoting Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994)). As explained above, defendants presented a legitimate nondiscriminatory reason for terminating plaintiff.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION