

# Ireland Supreme Court Analyzes Disability Accommodation Requirements

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On July 31, 2019, in the case of *Nano Nagle School v Daly*, the Supreme Court of Ireland delivered its decision in a long-running disability discrimination lawsuit between a paraplegic special needs assistant (“SNA”) and the school that ended her employment based on her disability. The Court’s decision provides a thoughtful analysis of an employer’s obligations to accommodate a disability and an interesting comparison to the approach under American law.

## **Facts**

In 1998, Marie Daly began working as an SNA for the Nano Nagle School in Killarney, a school for children with special needs. SNAs are tasked with assisting teachers with various non-teaching functions, such as tidying the classroom, supervising students, escorting students to and from the classroom, and assisting students with using the bathroom, eating, and undressing.

In 2010, a car accident left Ms. Daly paraplegic and confined to a wheelchair. After the accident, she met with the school’s occupational therapist, who performed an assessment of the tasks that Ms. Daly could perform on the job. The therapist determined that she would only be able to perform nine out of the sixteen duties identified for the SNA position, and noted her concern that Ms. Daly’s restriction to a wheelchair made her vulnerable when a student was “acting-out.”

After considering the report, but without consulting Ms. Daly, the school’s principal determined that Ms. Daly would be unable to return to her position. Although the report noted that Ms. Daly could be suitable as a “floating SNA” (in which she would work in multiple classrooms and only on certain tasks), the principal found that no such position existed, and, based on a phone call to the school’s funding body, determined that such a position would not be funded.

## **Procedural History**

In 2013, Ms. Daly's claims were first heard by an Equality Officer, who determined that she would be unable to perform the duties of an SNA. Ms. Daly appealed to the Labour Court, which held that the school had failed to accommodate her and awarded compensation. The High Court affirmed this determination, but it was reversed by the Court of Appeal. In 2018, Ms. Daly appealed to the Supreme Court.

## **Analysis**

Section 16 of the Employment Equality Act (the "Act") states in relevant part that "*a person who has a disability is fully competent to undertake . . . any duties, if the person would be so fully competent and capable on reasonable accommodation.*" Significantly, the Act does not require reasonable accommodations which "*would impose a disproportionate burden on the employer.*" In determining what measures have a disproportionate burden, the court may consider factors such as the costs involved, the employer's resources, and the availability of public funding.

The Supreme Court disagreed with the analysis of the courts below. Specifically, the Court of Appeal had held that an employer was **not** required to consider the possibility of removing or redistributing an employee's duties or essential functions connected with the employee's role. The Supreme Court disputed this threshold. It held that in principle, employers were obliged to consider all appropriate measures which could be undertaken to provide reasonable accommodation, even where these included removing or redistributing employee's duties or essential functions, and in cases where no such measure were taken, the employer had to demonstrate that this was only because those measures would be disproportionate or unduly burdensome. In setting out this test, the Supreme Court further held that "*the test is one of reasonableness and proportionality: an employer cannot be under a duty entirely to re-designate or create a different job to facilitate an employee*" and that in most instances "*removing all the duties which a disabled person is unable to perform*" would inevitably become a disproportionate burden.

The Supreme Court also took issue with the school's failure to consult with Ms. Daly about her situation. While it did not hold that such consultation is mandatory, it did opine that "*a wise employer will provide meaningful participation in vindication of his or her duty under the Act.*"

Finally, the Supreme Court was uncertain whether the school fully considered whether a floating SNA would be funded. It expressed concern that the school's phone call "*did not appear to have been preceded by, or followed up with, any letter making a formal case to retain [Ms. Daly] as a floating SNA,*" meaning that the school may not have "*taken real steps to identify 'the financial and other costs' entailed by taking the 'measure' of employing [Ms. Daly] as a floating SNA.*"

Based on this, the Supreme Court determined that the Labour Court had not adequately considered all of the evidence and had not properly explored whether the school fulfilled its obligations under the Act. It determined the only appropriate step forward was to remand the case back to the Labour Court.

### **Comparison to American Law**

The requirements detailed in the Daly case are similar to those under American law. Under the Americans with Disabilities Act ("ADA"), an employer is to engage in an "interactive process" with an employee regarding his or her disability and possible accommodations. An accommodation that eliminates essential job functions would go above and beyond what is considered reasonable for an employer to make, and therefore not required. Accordingly, the Irish legislation appears to be broader, as the Supreme Court seemed willing to consider the possibility that, at least in some circumstances, it is reasonable to make accommodations even if they were to remove essential functions.

### **Conclusion**

The case will now return to the Labour Court for further analysis in line with the Supreme Court's instructions. The Supreme Court's detailed analysis provides useful criteria for employers to consider when accommodating employees and provides an insight into the various approaches in different jurisdictions taken in relation to the fast-developing issue of accommodating disabilities in the workplace.

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