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Duff on Hospitality Law

DOJ's Recent Focus on Food Allergies Not Yet Cause for Alarm

07.26.13

In December 2012, the U.S. Department of Justice (DOJ) settled a case with Lesley University, requiring Lesley University to take significant, comprehensive measures to accommodate the needs of students with serious food allergies. Details on the settlement can be found here. DOJ took the position that food allergies may constitute a disability under the ADA, and that the many steps required in the settlement were mandated by the ADA's requirement that public accommodations make reasonable modifications to their policies, practices, and procedures that are necessary to ensure that individuals with disabilities have access to their goods and services.

However, the ADA does not require a public accommodation to engage in any measures that would "fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations" offered. Perhaps Lesley University could have relied on that defense if it had litigated, rather than settled with DOJ, but it is impossible to predict what the outcome would have been and no one can blame Lesley University for declining to find out.

The DOJ - Lesley University settlement has had many of us worrying that restaurants are already or will soon be in DOJ's sights for examination of allergy-free items and allergen-free facilities. While we are still concerned about the potential impacts of the DOJ – Lesley University settlement, we have not yet seen evidence of increased investigations by the DOJ. Even more encouraging, a technical assistance document released by the DOJ after the settlement with Lesley University gives some hope that DOJ is taking a reasonable approach that is consistent with the ADA. The technical assistance document confirms that "a restaurant may have to take some reasonable steps to accommodate individuals with" food allergies, such as "omitting or substituting certain ingredients upon request if the restaurant normally does this for other customers." However, DOJ confirmed that the ADA does not require restaurants to change their menus to offer gluten or allergen-free foods. DOJ also emphasized that Lesley University's situation was unique because it involved mandatory meal plans.

We will continue to monitor this issue along with other ADA public accommodation issues, but for the moment we wanted to pass along some good news on this issue.

Please contact me if you have any questions.

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Posted in Food and Beverage

Tagged as ADA, Allergies, DOJ, Gluten-Free, Menu

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