

Louisiana Employment Law Letter

H. Mark Adams, Jennifer L. Anderson and Jennifer A. Faroldi

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WORKPLACE VIOLENCE

Complying with disability discrimination law without 'going postal'

Several well-publicized incidents of unusual or erratic employee behavior, including some unfortunate incidents of workplace violence, have made the U.S. Postal Service the target of jokes and comedy sketches about employees who have a propensity to "snap." Postal worker Newman from the hit sitcom Seinfeld explained the reason for that tendency: "[B]ecause the mail never stops. Every day it keeps coming in, and the faster it goes out, the faster it comes in. And the stacks grow higher and higher [now getting frantic]. And then the bar code reader breaks, and it's Publisher's Clearing House day!" Memorable quotes such as this one helped to create the pop culture phrase "going postal" to describe an employee who has lost his cool and taken it out on co-workers.

Unfortunately, an employee "going postal" is no laughing matter for companies that (1) have employees with mental and emotional conditions, (2) are faced with the competing interests of the business and the safety and health of the affected workers, and (3) failed to provide a reasonable accommodation. A number of concerns arise when employers are called on to address those types of conditions, including the treatment of the employee under the Americans with Disabilities Act (ADA) and the maintenance of a safe workplace for co-workers.

Troubled worker challenges discharge in court

A postal employee began to experience depression as a result of his daughter's health problems. At the same time, his station received a new postmaster, who asked workers to take on additional work. The employee refused, and the new postmaster and other supervisors began to cite him for numerous technical violations, even though other workers weren't cited for similar problems.

The employee complained of increased stress and asked management to "back off." According to the employer, the employee also switched delivery routes frequently, requested assistance for routine deliveries, and substantially underperformed in terms of the amount of mail delivered in a shift. He received psychiatric treatment but never notified his employer of his condition or requested any special job accommodation.

The employer conducted a fitness-for-duty exam of the worker because of what it considered to be increasingly odd behavior. The employer ultimately determined the employee was unfit for service and fired him.

Court's decision turns on worker's obligations under ADA

The employee sued the postal service in a Louisiana federal court, claiming that it discriminated against him in violation of the Rehabilitation Act of 1973, which prohibits certain federal agencies and federally funded programs from discriminating against an otherwise qualified individual solely because of his disability. The Rehabilitation Act tracks the ADA's language in determining whether an employee has a covered "disability" and whether the employer must provide a reasonable accommodation. The employer asked the court to dismiss the employee's case, and the court agreed. The employee appealed to the U.S. Fifth Circuit Court of Appeals in New Orleans.

The Fifth Circuit reaffirmed the established view that in a disability discrimination case, the employee has the initial burden to show that he's a qualified individual with a disability, meaning he can perform the essential job functions with or without a reasonable accommodation. Also, to show that an employer failed to provide a reasonable accommodation in cases in which the disability limitations and the accommodations aren't reasonably apparent to the employer, the employee must first put the employer on notice of a covered disability. The court noted that mental disabilities often aren't apparent to the employer, although that isn't always the case. Once the employee notifies the employer of the mental disability, the employer has a duty to participate in an interactive process with the employee to determine whether a reasonable accommodation is available.

The employee argued that the postal service was on notice of his disability through his increasingly bizarre workplace behavior and therefore had a duty to inquire about the existence of a covered disability and a possible accommodation. The court rejected that argument without deciding whether the employee's bizarre behavior put the employer on notice of the disability. The court stated that "we do not express an opinion as to whether one may notify an employer of a disability merely through actions and informal statements rather than through a more formalized declaration." Instead, the court explained that the employee must effectively notify the employer of the mental disability and request certain accommodations. Because the employee in this case failed to suggest a possible accommodation, his claim was properly dismissed.

The court also observed that at the time of the employee's discharge, his mental condition had deteriorated to the point that he couldn't perform his job even with a reasonable accommodation. Thus, because he failed to show that he was a "qualified" individual with a disability, his discrimination claim was also properly dismissed. *Cloutre v. Runyon*, 2003 U.S. App. LEXIS 25148 (5th Cir. 2003).

What should you do when employee gives signs of 'going postal'?

You don't have to look hard or far to find examples of erratic employee behavior and workplace violence occurring in a variety of private industries other than the post office. Just last year, a Mississippi employee opened fire on co-workers before turning the gun on himself. According to media reports, the employer may have had notice of behavior suggesting that the employee had a mental or emotional condition or might engage in violent behavior.

The Fifth Circuit's ruling doesn't mean that you can turn a blind eye to employees' comments or behavior that suggest a mental or emotional problem and avoid your obligation to provide a reasonable accommodation. Indeed, ignoring that type of problem can have consequences far more serious than a disability discrimination lawsuit, such as workplace violence. And while most employers would rather defend a discrimination lawsuit rather than a wrongful death lawsuit, you could avoid both depending on how you respond to the news that an employee has such a condition — or behavior indicative of such a condition.

You must balance your employees' right to be free from discrimination based on either actual or perceived disabilities (or a record of a disability) with your interest in maintaining a productive and safe workplace. If you receive information that an employee may be suffering from a mental or emotional condition, don't become alarmed or overreact by taking an adverse employment action against the individual. Rather, first consider whether the employee has engaged in any behavior or had any performance problems that could be related to such a condition. If that's the case, you should make a job-related inquiry of the employee about his assigned duties and ability to perform them to determine whether he has a condition for which a reasonable accommodation may be needed.

Remember that state and federal disability discrimination laws require you and the employee to engage in an "interactive process" and work together to determine the employee's limitations and any available reasonable accommodations. But if the behavior consists of actual or threatened violence or other actions placing the safety of the employee or his co-workers at issue, your obligation to provide a safe workplace may override any obligation to the employee if he would pose a direct threat to the health or safety of himself or others.

Ultimately, your obligations and the employee's rights in those circumstances will turn on the specific facts at hand. So it's imperative that you consult with your labor counsel to determine an appropriate solution. The courts have repeatedly recognized that employees' disability issues must be addressed on a case-by-case basis and can be complicated by the fact that they may also present issues under the Family and Medical Leave Act, workers' compensation laws, disability insurance policies, and other employer-provided benefits. Your ability to spot those legal red flags and seek advice when needed will put you ahead of the game and keep you from "going postal" when you're trying to comply with the laws implicated by employees' mental and emotional disabilities.

Find out more about workplace violence in the subscribers' area of HRhero.com, the website for Louisiana Employment Law Letter. You have access to an HR Executive Special Report on the subject: "Workplace Violence and Employer Liability." Just log in and scroll down to the link for all the Special Report titles. Need help? Call customer service at (800) 274-6774.

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