Louisiana Employment Law Letter

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Highlights

- Court calls off phone company employee's claim
- All the king's men (and women) revisited — more on 2004 legislation
- Oops! I didn't mean to give you that vacation time
- DOL dubs new overtime regulations 'FairPay Initiative,' but opponents cry foul
- New exempt-duties tests for executive, administrative, and professional employees

DISABILITY DISCRIMINATION

Court calls off phone company employee's claim

Employers often assume that just because an employee has been diagnosed with a disease or an illness, he's disabled and entitled to protection under the disability discrimination laws. But assumptions can get you into trouble. When it comes to disabilities in the workplace, there aren't any clear-cut rules. Whether someone is considered disabled in the eyes of the law is determined on a case-by-case basis, and that isn't always as easy as dialing 1 - 2 - 3.

Hanging up on obnoxious employee

Dick Arrington was a telephone company customer services technician in charge of installing and repairing telephone lines. Arrington had a few problems: He was rude, his appearance left something to be desired, and he was a habitual time-waster. He was routinely counseled for absenteeism and poor productivity. He also had been diagnosed with diabetes.

Because of diabetic foot ulcers, Arrington was forced to take disability leave. The phone company fired him after a disagreement about his return date arose. Arrington then filed a complaint against his former employer. After a quick settlement, the phone company rehired him to his previous position.

Soon, Arrington's bad habits resurfaced. A phone company customer complained about his poor skills and bad attitude. She also complained that his appearance had upset her daughter. Because of that complaint, he was placed on "decisionmaking leave." The pÂone company gave him one day to decide whether to return to work. He did return and was given one year's probation, during which he could be fired immediately if his poor performance recurred.

One day, Arrington's supervisor decided to drop by his job site for a visit, but he was nowhere to be found. His supervisor contacted the customer to make sure that he had, indeed, performed his duties. As so many others had done before, the customer complained about Arrington's rude behavior and inability to finish the job. As a result, the phone company suspended him and then offered him another position that didn't involve either customer interaction or productivity requirements. The company fired him after he refused to accept that position.

Ex-employee makes 911 call to court

Arrington sued the phone company, alleging he was fired because of his diabetes in violation of the Americans with Disabilities Act (ADA). He also claimed he was fired in retaliation for the complaint he filed against his former employer years earlier.

The phone company tried to get the case thrown out by arguing that Arrington didn't have a "disability" within the meaning of the ADA. The trial court agreed and dismissed his lawsuit. Arrington then rang the appeals court.

Hold the phone!

The appeals court first addressed Arrington's disability discrimination claim. The court considered whether he (1) had a disability; (2) was qualified for his job; (3) was subjected to an adverse employment action (e.g., fired); and (4) was either replaced by a nondisabled worker or treated worse than nondisabled workers under the same circumstances.

Arrington argued that insulin-dependent diabetes is a disability. The phone company countered that diabetes isn't a disability unless it "substantially limits" at least one "major life activity." The appeals court agreed, noting that Arrington hadn't shown his diabetes substantially limited one of his major life activities. The court explained that he couldn't prove he had an ADA-covered disability simply by referring to his medical diagnosis.

The court observed that Arrington claimed his diabetes affected his production (i.e., ability to work), which he said is a major life activity. The court explained that although working is a major life activity, the inability to perform a single job or a narrow range of jobs isn't a "substantial limitation" on someone's ability to work. It concluded that Arrington's diabetes didn't render him incapable of performing a broad range of jobs, and therefore, he wasn't disabled under the ADA.

The court next addressed Arrington's retaliation claim, focusing on the phone company's reasons for firing him. The company provided the court with a record of Arrington's troubled performance history. It produced several customer complaints, which spanned a variety of topics, including his disheveled physical appearance, his attitude, and his poor skills.

The company also let the court know that it had given Arrington numerous opportunities to improve. It had offered him five separate performance improvement plans, the help of its employee assistance program, two instances of "ride along" assistance from a training manager, and an alternate position within the company that better suited his abilities. He had declined all of its attempts to help him. Consequently, the court found that the phone company had a legitimate, nondiscriminatory reason for firing him unrelated to his medical condition — his behavior and performance.

The court said a reasonable jury couldn't conclude that Arrington was fired in retaliation for filing a complaint against the phone company in 1996. He hadn't been treated differently from other company employees who had similar histories of customer complaints and low productivity levels. So the court upheld the dismissal of his retaliation and disability discrimination claims. Arrington v. Southwestern Bell Telephone Co., 2004 U.S. App. LEXIS 3775 (5th Cir. 2004).

The 411

This case emphasizes that an employee isn't disabled under the ADA solely because of a medical diagnosis. If one of your employees is diagnosed with a condition that doesn't limit him in a major life activity, then he isn't disabled under the law. If he's limited in his ability to perform a major life activity but can perform the essential functions of his job with or without a reasonable accommodation, then the ADA protects him from discrimination and requires you to provide him with that reasonable accommodation.

Just remember that the determination of whether an employee is disabled is highly individualized and there aren't any clear-cut rules. Even courts sometimes struggle with that issue in ADA cases. As this case shows, an obvious impairment may not be so limiting of an employee's major life activities as to trigger the ADA. So your best bet is to seek legal advice when you're faced with perplexing questions about whether one of your employees is disabled and what your obligations under the ADA are.

Find out more about ADA accommodations in the subscribers' area of HRhero.com, the website for Louisiana Employment Law Letter. You have access to an HR Executive Special Report titled "ADA from A to Z: Everything You Need to Know About the Americans with Disabilities Act." 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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