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Employer's dilemma: balancing ADA requirements with rules of the workplace

Under the Americans with Disabilities Act (ADA), employers must accommodate workers with disabilities. If an employer takes a negative employment action (firing, refusing to hire, demoting, refusing to promote, etc.) against an employee with a physical, mental or even emotional disability, the disability can't be the reason.

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If an otherwise-qualified employee needs reasonable (not overly burdensome) accommodations for his or her disability in order to do the job, the employer must provide them. Employers also face serious legal trouble if they retaliate against employees for exercising their rights under the ADA.

This is more than fair, but it can create challenges for employers trying to accommodate disabilities while enforcing the rules of their workplace. It's a difficult balance, but a recent ruling from a federal appellate court may provide guidance.

The case involved Shannan McDonald, a receptionist in Michigan who suffered from a genetic disorder that had required a number of surgeries for which she had to take time off from work. She was a union member working under a collective bargaining agreement that required workers to take lunch breaks no earlier than 11 a.m. Employees had to decide between a 30-minute lunch break with additional 15-minute breaks (not to be tacked on to the lunch break) and a one-hour lunch break.

McDonald chose a half-hour break but started leaving for the

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School held accountable for bullying victim's suicide

Many of us still think of school bullying as the tough kid on the playground trying to take your lunch money. But bullying encompasses a lot more than that. Officially it's defined as any kind of unwanted, aggressive and usually repeated behavior among schoolchildren involving a power imbalance, either physical or social.

This can involve physical or verbal attacks, threats, spreading rumors or purposely excluding someone from a group. It happens in person and online (cyberbullying) and it can result in serious physical and emotional harm. In fact, in some instances, bullying victims have taken their own lives.

Schools are expected to take strong measures to stop bullying when it occurs and to prevent it from happening in the first place. In many states, if they fail to do so they can be held responsible for harm the victim suffers.

This happened recently in a tragic case from Missouri. Ethan Young was a 14-year-old who wore his hair long, didn't participate in sports and spent most of his time with female friends. He experienced repeated bullying and harassment at the hands of other boys beginning in sixth grade and continuing into ninth.

A month into his freshman year, Ethan committed suicide. His father took the school district to court, alleging that school officials ignored warning signs that Ethan was at risk, including lagging grades and attempts to run away from his school bus stop to avoid going to school. Had the school taken steps to address the situation, Ethan might still be here today, the father argued.

Rather than risking a larger jury verdict, the district settled the case out of court for a six-figure sum. This followed two other bullying settlements in the same town under similar sets of facts.

These cases are unusually tragic, but schools potentially can be held responsible for lower levels of harm too. If your child has suffered the harmful effects of bullying and you feel the school should have done more, a lawyer in your town can discuss your options.

We welcome your referrals.

We value all of our clients. While we are a busy firm, we welcome your referrals. We promise to provide first-class service to anyone that you refer to our firm. If you have already referred clients to our firm, thank you!

Visitation pick-up and drop-off: a contentious issue

Child custody disputes are contentious in themselves. But once those are resolved, other related issues can pop up. Who drives the kids for visitation is one such issue that sounds petty but can be the source of a surprising level of strife.

That's especially true when you throw in issues such as lateness, the difficulty of getting to the location in question and conflicts between visitation schedules and children's other activities. Sometimes, tension over this issue can land divorced spouses back in court.

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That happened recently in New Jersey. When the couple in question got divorced, they lived in the same town and agreed to alternate weekends with their daughter. The father agreed to do all driving in connection with his visitation time.

The mother later moved to New York City and then back to New Jersey. At that time, the father agreed to keep providing all transportation related to his parenting time until the mother completed her move. But the agreement didn't address what would happen then.

Three years later, with the mother back in New Jersey but not living close to the father's house, the father went to court seeking an order that they share driving responsibilities equally. The mother opposed this, arguing that because he didn't pay alimony and his child support obligations were "modest," it was only fair that he do all the driving.

A family court judge agreed with the father, ruling that it was fair and equitable for them to share driving duties for parenting time equally, and ordered them to find a pick-up and drop-off spot halfway in between. An appeals court upheld the decision.

The case shows that not only can small logistical issues be controversial after a divorce, but that although you may bargain for one thing at the time of the divorce, changes in circumstances can affect whether the agreement should stand. The best way to address these issues is to be reasonable and be prepared for changes, and to talk to a family lawyer about how best to plan for them.

Employer's dilemma: balancing ADA requirements with rules of the workplace

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company gym at 10:30 a.m. to exercise while tacking on her 15-minute breaks to create an hour break. She also was accused of sexually harassing another worker.

While the company was investigating the alleged harassment, McDonald asked to switch to an hour-long break or tack on her breaks in order to continue exercising during the workday, explaining that it helped with her pain.

Her supervisor denied the request because it didn't comply with the work rules under the CBA. She also warned McDonald that continued violations of the lunch break policy would result in discipline.

McDonald provided the personnel manager with a doctor's note confirming she needed to exercise every day for at least 30 minutes. While the personnel manager was processing her request, McDonald left early to go to the gym without permission. She was suspended for violating workplace rules and resigned.

McDonald sued her employer for violating the ADA by refusing to accommodate her disability and for retaliating against her by suspending her. But the court, upholding a trial judge's dismissal of the case, rejected her claim.

The court found that the employer met its obligation to reasonably accommodate McDonald. It noted that the employer listened to her request and provided alternatives, but she quit before it could process that request. It noted that less than two months had passed between the initial request and her resignation. The court also rejected her retaliation claim, pointing out that McDonald was suspended for violating rules and not for requesting an accommodation.

So what does this case show? Employers can hold fast to their workplace rules as long as they do so in a fair and even-handed manner and are flexible about requests for accommodations.

However, a 2014 case from California ended differently. In that case, a diabetic employee at a Walgreen's pharmacy was fired for violating an "anti-grazing" policy that barred workers from eating food sold in the store without first paying for it. The employee claimed she suffered a hypoglycemic attack when restocking items. She was allowed to carry candy in case she experienced a crash but didn't have any with her, so she grabbed a $1.37 bag of potato chips and ate a few. She claimed she tried to pay for the chips once she felt better, but nobody was at the counter where employees paid for items. She stowed the chips under the counter by her register, where a supervisor found them and fired her.

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The federal Equal Employment Opportunity Commission (EEOC) went after Walgreen's under the ADA, claiming disability discrimination. Walgreen's countered that it didn't fire the worker for her disability, but for the theft. It also pointed out that it was losing more than $350 million a year to employee theft at its thousands of locations, so it had to enforce its policy strictly.

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But a federal judge rejected this argument, stating that Walgreen's had to address the "business necessity" of the policy in the context of an employee suffering a medical event.

The judge also pointed out that Walgreen's couldn't establish the employee was "stealing" in light of her claimed attempts to pay for the chips. Ultimately, the company's conduct in this case resulted in a $180,000 settlement with the EEOC on the worker's behalf.

That costly bag of chips serves as a warning that although work rules matter, they should be applied reasonably. Both cases show that when work rules run into conflict with the ADA, employers should talk to an employment lawyer to discuss the best way to proceed.

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Your Health Savings Account can be a stealth IRA

Generally, people don't think about a Health Savings Account (HSA) as a savings account. The HSA was intended to be a tax-advantaged account to pay for medical expenses, but in certain ways it's better than an IRA.

An HSA is a tax-preferred investment account with triple tax advantages. Your money isn't taxed when it's contributed, as it grows, or when you spend it on qualified expenses. It's the only tool that allows you to contribute tax-deductible dollars and take them back out tax-free.

Unlike flexible spending accounts, there's no "use it or lose it" provision, meaning the account can continue to grow and gain value.

In order to open an HSA, you must be enrolled in a High Deductible Health Plan. For 2019, this is defined as one with a deductible of at least $1350 for an individual or $2700 for a family.

The 2019 contribution limits are $3500 for an individual and $7000 for a family. If you're over 55, you can add $1000 in catch-up contributions. (That's better than the limits on traditional or Roth IRAs.)

Plus, unlike IRAs, there's no income limit on deducting contributions to an HSA. Your contributions remain deductible no matter how much you earn.

An HSA combines the tax benefits of a Roth IRA and a traditional IRA in one sheltered account. If you don't use the money, it can continue to grow tax-free.

If you withdraw money before age 65, you must use it to pay for qualified medical expenses. Otherwise, you'll be subject to income tax and a 20 percent penalty.

However, once you reach age 65, you can withdraw money for any reason. At that point, you can continue to use your HSA funds for medical expenses and avoid taxes, or you can withdraw funds for other purposes and pay income tax on the amount. Essentially, you have the option to treat it like a traditional IRA once you reach 65.

Considering your expected health care costs in retirement, an HSA may be a better savings tool than other options. Talk to an advisor about adding it to your financial strategy.