

My Disability Made Me Do It!

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The notion that the essential functions of a job include actually showing up for it may soon be hopelessly naive and outdated. Likewise, the idea that an employer can just go ahead and fire an employee for stealing may soon seem quite old-fashioned. Soon, if the current trend in the development of case law under the Americans with Disabilities Act continues, employers could be prohibited from firing or disciplining "disabled" employees for sexually propositioning coworkers, screaming at customers or defying bosses, as well as for stealing and not showing up for work. This development - which contradicts the traditional view that employees may be disciplined for misconduct regardless of whether the misconduct is caused by a disability - appears to have been born in an odd 1997 case and resurrected recently in a federal district court case and a 9th Circuit case, both of which have very disturbing implications for employers.

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Related People



James J. McDonald, Jr.

Partner

949.851.2424

Email