The Morning Risk Report: Germanwings Changes Corporate Risk Calculus

News
3.30.15

Howard Mavity was quoted in the *Wall Street Journal* on March 30, 2015. The article "The Morning Risk Report: Germanwings Changes Corporate Risk Calculus" discussed how the Germanwings co-pilot, in which investigators believe deliberately crashed an airliner in France, could change the risk calculation for companies in the U.S. that must balance employee privacy and disability concerns with liability for harm to others.

Companies that formerly kept their distance from employee mental health problems, with an eye to the Americans with Disabilities Act, will have to pay more attention to the liability risks of such inattention, said Howard. "The traditional approach of employers with regard to depression, alcohol, etc. has been don't ask, don't tell; they focus narrowly on performance," he explained. That has been the surest approach to avoid liability under the ADA. But where an employee's mental health can put lives at risk, "Employers are going to start weighing the risk of a six figure ADA law suit against the risk of a hundred million dollar exposure and damage to reputation," Howard said.

This is especially true for companies in the transportation industry, because they have legal protection against liability under ADA if a physician says an employee's mental or physical problem constitutes a danger. "The courts have held that Federal Department of Transportation qualification standards trump the ADA," Howard said. In industries that lack such protection, the tradeoff isn't so clear. "Unless public policy changes to create a safe harbor for employers, I don't think you'll see employers stepping out," observed Randy Nomes, executive vice president at Aon Risk Solutions.

Please reach out to our Media team for any news inquiries.

Related People

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

Howard A. Mavity
Partner
404.240.4204
Email

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.