

Insights, News & Events

FORMER DEALERSHIP EMPLOYEE NABS \$1.3 MILLION VERDICT IN DISABILITY DISCRIMINATION SUIT

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Why should your dealership conduct thorough investigations into possible employee misconduct and document poor performance *before* termination? A Florida court just gave 1.3 million reasons.

Earlier this year, in the case of *Axel v. Fields Motorcars of Florida, Inc.*, a federal jury in Florida handed down a verdict of nearly \$4.5 million on a former employee's claims of disability discrimination, directing the dealership to cough up \$680,000 for loss of wages and benefits, \$600,000 for emotional pain and mental anguish, and \$3.2 million for punitive damages. The court later reduced the punitive damages award to \$100,000 in accordance with Florida law, leaving the dealership with a final invoice of \$1,380,000.

BACKGROUND: WAS EMPLOYEE ATTEMPTING TO DECEIVE?

So, how did it get to this point? Scott Axel had been an employee with Fields Motorcars since 2004, and was diagnosed with kidney cancer in 2010. He opted to undergo holistic treatments, which dealership management subsequently characterized as "not . . . real doctor's treatment" and "crazy." Nonetheless, he had recently received positive performance reviews

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and was on pace to have one of his most productive years.

Then, in May 2014, the dealership discovered a 10-year-old letter signed by Axel authorizing his son to help transport cars from auction on behalf of the dealership, and listing his own job title as “General Manager” (which was not accurate). When confronted with these facts, Axel claimed that the dealership had agreed, and even suggested, that his son help transport cars, and that an auction employee had mistakenly listed his job title as “General Manager” without his knowledge. Indeed, the job title was written in different handwriting than Axel’s. Yet, to the dealership, this was proof that Axel had been lying to them for years, and therefore terminated his employment.

JUDGE AND JURY: DEALERSHIP RUSHED TO JUDGMENT

The court, however, was not impressed. The judge labeled the dealership’s investigation “cursory,” and stated that even a “facial review of the letter suggests that it contains two different types of handwriting.” The court also uncovered instances of other employees supposedly “lying” to the dealership that did not result in termination. Moreover, the court found it “troubling” that the dealership had given shifting explanations of how the letter was uncovered.

All in all, the judge believed there was enough evidence to suggest that the dealership’s true motivation in terminating Axel was his cancer diagnosis, and therefore handed the case over to the jury. \$1.3 million later, the matter was brought to a costly conclusion.

5-STEP PLAN FOR AVOIDING THE SAME FATE

Dealerships may wonder how to handle terminations or disciplinary processes—especially when it involves an employee with a protected status or disability. Here are five practical recommendations you should follow when engaging in a disciplinary process:

1. Conduct a **thorough investigation** of any alleged company policy violations. Interview all potentially relevant witnesses to get their side of the story and maintain documentation throughout the investigation to create a paper trail.
2. Give a **verbal warning** to any employees who are performing poorly. Communicate to a subordinate that their job performance is deficient, giving them the chance to tell their side of the story and explain any extenuating circumstances.
3. Follow up the discussion with a memo **documenting** the verbal warning. Sending a follow-up note captures the conversation on the employee's deficient performance and provides your dealership with a paper trail.
4. If the behavior continues, draft a **written counseling report**. Be sure to get the employee's signature acknowledging that they received the counseling report and are aware of its content.
5. Your managers must be **consistent**. A jury will not be impressed with your stack of write-ups if they hear testimony that other employees were not written up for the same or similar offenses.

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