WEB EXCLUSIVE: Don't Panic! 3 Things Dealerships Need To Know About Latest ADA Court Ruling

Insights
5.01.19

For all employers, dealerships included, complying with the Americans with Disabilities Act (ADA) can seemingly be one of the most challenging tasks for management and human resources. Not only does it seem like there is a long list of complex rules and standards to keep in mind, the penalties for screwing up can be daunting: a discrimination claim, a government investigation, or an attorney demand letter seeking hundreds of thousands of dollars can land on your lap if you don't handle things the right way.

But we have good news for you. In reality, compliance with the ADA doesn't have to be a daunting prospect. In fact, sometimes it's as easy as asking the very same thing you might ask a potential customer when they first walk on your lot: "How can we help you?" A recent federal court case against an auto dealership in Arkansas helps shine a light on what you should do – and what you shouldn't do – in order to stay on the right side of the law. Here are three things you need to know about the latest ADA court ruling.

1. 1. 1. 1. **You Need To Consider Timing When It Comes To Terminations**

    Judith Vaughan began working for an Arkansas-based dealership as an Accounts Payable Clerk in late 2016. Several months later, a series of problems unfolded over the course of about a week that led to her termination and a federal employment discrimination lawsuit.

    The trouble began on Monday, January 30, 2017, when Vaughan began experiencing chest pains and went to the emergency room, fearing she was having a heart attack. After several days of medical treatment, she learned that her symptoms were the result of a panic attack. She told her supervisor that she was diagnosed with anxiety, depression, and had suffered a panic attack earlier in the week. She tried to return to work that Friday but started to have another panic attack; she emailed her supervisor to explain that she "can't do this" and was "still hurting too bad," and left work. She once again returned to work on Tuesday, February 7, but the dealership terminated her employment for violating the company's attendance and call-in policies.

    Before we get to the nitty-gritty of ADA compliance, it's important to use this case as a reminder of the risks involved in terminating an employee shortly after you learn that

they are in some sort of protected class. If you just learn that an employee is pregnant, or sustained an on-the-job injury, or just made a report of sexual harassment, or complained about safety conditions in the workplace, or – as in this case – diagnosed with a medical condition, you might need to alter your plans when it comes to employee discipline. It's easy for an investigator, a court, or a jury to infer a bad motive on your part if you take action against a worker right after something like this occurs.

You won't necessarily have to keep them employed forever, however. If circumstances existed that led you to want to terminate their employment but the worker ends up joining a protected category right before you were about to pull the trigger, you will just need to tread carefully. We recommend you contact your labor and employment counsel, because each situation is a little different and you'll need tailored advice for each case.

2. **Documentation Can Be A Lifesaver**

Getting back to the case at hand, Vaughan went to the Equal Employment Opportunity Commission (EEOC) to complain about her termination, and the agency filed an ADA lawsuit on her behalf against the dealership. The employer asked the court to dismiss the case, but in a ruling that was just handed down by U.S. District Judge J. Leon Holmes on April 11, the court ruled in Vaughan's favor and cleared the case to go to trial.

There are two ways in which better documentation might have saved the day for the employer in this case and led the court to rule in its favor. First, imagine if the employer had kept contemporaneous notes or other documentation about Vaughan's job performance throughout her employment. Imagine, even, that the employer had kept internal notes and perhaps even provided the employee with written warnings indicating that her employment was at risk because of poor performance. It's a lot easier to justify a termination if you can show written proof that you were on the path towards disciplining the employee well before they put themselves in a protected category.

Second, in Vaughan's case, she claims that her supervisor told her at her termination meeting that she was being let go "due to her health," because it "wasn't going to work out." The supervisor denies having actually said that, but as you probably know, it's hard to win a credibility contest in court with a sympathetic worker on the other side when you don't have good documentation. But the court record doesn't seem to indicate that the dealership provided Vaughan with a termination letter outlining the reasons for the firing. And this is the second way better documentation could have saved the dealership.

We always recommend drafting up a concise and to-the-point termination letter that you hand your worker at the time you are letting them go. The letter serves two critical functions. First, it gives you a set of talking points to refer to as you are communicating the dismissal to the worker. By sticking to this precise set of points, you make sure you don't stick your foot in your mouth and unintentionally say something that could come back to bite you.

Second, by writing such a letter, you establish the narrative regarding the reason for termination that you can consistently refer to as an explanation for the termination. Because courts sometimes fault you for providing inconsistent reasons for a termination at various stages in the process, you can create a truthful and powerful explanation at the outset and in writing, and continually refer to it during the termination meeting, during an unemployment hearing, at an agency investigative meeting, and in court. In this case, had the dealership's supervisor written such a letter, it would have been harder for Vaughan to create a narrative about what was said to her at the termination meeting.

3. **"How Can We Help You?" Can Be Your Saving Grace**
Getting to the crux of this case, the easiest thing that this dealership could have done to avoid ADA exposure with Vaughan is to begin an "interactive process" with her in order to (a) determine whether she has an ADA-qualifying disability, and (b) if so, figure out whether any reasonable accommodations exist that would have allowed her to do her job. Although the dealership argued to the court that Vaughan never requested an accommodation and therefore never triggered the interactive process, the court disagreed.

The court noted that all an employee needs to do is to make it clear that they need assistance for their disability. They simply need to provide the employer with enough information that, under the circumstances, would allow the employer to fairly know that the worker has a possible disability and a desire for an accommodation. The judge said that the employee is not required to use "magic words" such as "reasonable accommodation" to kick-start the process.

So once you have enough information that you believe triggers an interactive process ("My back hurts and it's hard for me to work today," or "My new medication makes me drowsy and I am having trouble getting to work on time"), all you need to do is say "How can we help you?" That, in essence, is the beginning of the interactive process. It is also good management, as you should always be working with your employees to find out what kinds of resources you can be providing them to help them do their job better.

You have many options at this point, depending on the worker's answer. You have the right to seek medical information to confirm any diagnosis and get ideas for possible

accommodations. You might directly work with the employee to adjust their duties, if reasonable. You can confer with the worker's direct supervisor to find out how certain proposed accommodations would impact the day-to-day workings of the department. You could experiment with certain possible adjustments to see how they work out. There are so many options, in fact, it's hard to list them all.

Instead, the best option at this point is to consult with your labor and employment counsel to make sure you are positioning the worker correctly and complying with the ADA. The solution might be so simple that it costs little to no money and barely makes a ripple in the functioning of your dealership; but your worker is happy that you worked with them to solve their problem and you avoided ADA liability.

Conclusion

The ADA was amended about a decade ago, and it is now surprisingly easy for a worker to prove that they are "disabled" under the federal statute. For this reason, it is usually best to err on the side of caution and consider possible reasonable accommodations before a legal conflict develops. By remembering this case, and remembering the critical words – "How can we help you?" – you will be well on your way to ADA compliance the next time a situation like this presents itself.

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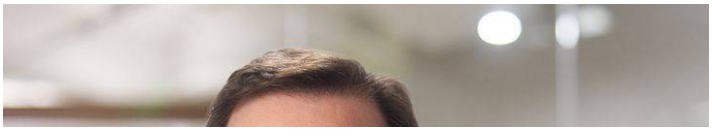

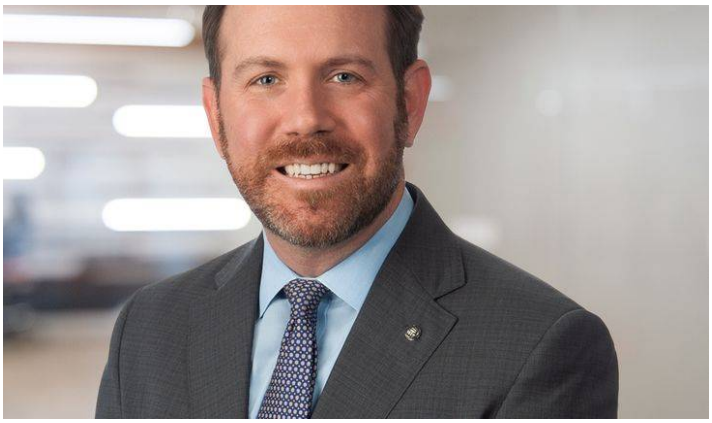

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