

Employees That Are Erratic and Disruptive, While Suffering From A Mental Illness, Can Still Be Terminated Under The ADA

Labor & Employment Law Update

By Julie Proscia on June 19, 2015

Erratic behavior, caused by an underlying medical condition, does not necessarily mean a free pass under the Americans with Disabilities Act (ADA). In March, the Eighth Circuit Court of Appeals, in *Walz v. Ameriprise Financial, Inc.*, upheld the termination of a bipolar employee, finding that the termination did not violate the ADA. Identifying and accommodating employees with overt physical disabilities is substantially easier than accommodating behavior that is disruptive and/or erratic and caused by mental illness. Because of the difficulty in addressing these types of issues, employers are often unsure of what to do—and thus do nothing. This ruling is good news for employers that struggle with disciplining and ultimately terminating individuals that are disruptive in the workplace and who cannot perform the essential functions of their position with or without a reasonable accommodation.

In *Walz v. Ameriprise Financial, Inc.*, the plaintiff worked for Ameriprise as a process analyst. The position required not only good communication skills but also the ability to work well in a team. Starting in 2012, the plaintiff began to interrupt meetings, disturb coworkers, and disrespect her supervisor. After Walz's supervisor had repeated discussions with her about her behavior, including offers of assistance and time off, she was eventually issued a disciplinary warning. Walz then applied for FMLA leave which was granted by a third party vendor that administers the leave requests for Ameriprise. Neither the third party vendor nor Walz ever informed Ameriprise of the reason for the FMLA leave. Upon her return to work, Walz provided a doctor's note stating that her medications had been stabilized and was released for duty. The plaintiff was then given, reviewed, and signed a document that explained Ameriprise's policy against disability discrimination and the procedure for requesting a reasonable accommodation. Within months of her return to work, Walz again began to engage in disruptive and erratic behavior to both her colleagues and supervisor, and was ultimately terminated. Throughout this time, Walz never requested a reasonable accommodation or reported the nature of her illness.

Walz subsequently sued Ameriprise alleging that it violated the ADA and should have known that she had a disability and forced her to take additional time off, despite the fact that she never disclosed the illness nor requested an accommodation. On appeal, the Eighth Circuit rejected her arguments and upheld the district court's ruling. In doing so, the court found that Walz was not a qualified individual under the ADA because she could not perform the essential functions of her position with or without accommodation. Moreover, it held that the employer does not have a duty to "guess" an employee's disability when the employee does not inform it of the illness or injury.

Bottom Line: Employers can discipline and terminate employees for erratic, rude and disruptive behavior even if the cause is ultimately related to an underlying medical condition. In a note of caution, employers still need to engage in the interactive process and investigate reasonable accommodations if the employee has disclosed a medication condition causing the behavior.

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