

Employers Do Not Have to Allow Unacceptable Workplace Behavior Due to a Disability

Labor & Employment Law Update

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The Americans with Disabilities Act (ADA, ADAAA) and Rehabilitation Act, which incorporates most of the ADA standards, prohibit discriminating against employees based on their disabilities. Indeed, with the ADAAA amendment, recent court decisions have broadened the scope of what is considered a disability, as well as what steps an employer must take in order to comply with the law.

In doing so, employers may feel that their hands are tied behind their back in dealing with employees who perform poorly and/or act out at work. However, just because an employee is disabled does not mean that they should be given *carte blanche* freedom in what they say and do in the workplace.

Recently, the Eastern District of Wisconsin dismissed a former Wisconsin Department of Transportation employee's claims under the Rehabilitation Act (which incorporates most of the ADA standards) and Family Medical Leave Act, finding that the employee's conduct was unacceptable. In doing so the court followed the Seventh Circuit case, *Brumfield v. City of Chicago*, 735 F.3d 619 (7th Cir. 2013) and held that an employer may terminate an employee for engaging in unacceptable workplace behavior without violating the ADA (or Rehabilitation Act), even if the behavior was precipitated by a mental illness.

Specifically, the court held that the employee's hysterical screaming and suicidal behavior in front of co-workers and members of the public was simply not behavior that an employer generally has to tolerate or accommodate. Indeed, the court recognized that absent a disability, an employer would otherwise be entirely justified in immediately terminating an employee who engaged in such behavior.

While this may be an extreme example, employers should understand that their hands are not tied when it comes to dealing with employees who blame their poor performance or unacceptable workplace behavior on a disability. However, since this is a sensitive subject that can very easily lead to a discrimination claim, employers should make sure to understand the current case law and consult

with legal counsel before taking disciplinary steps that may include termination.

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