

“The Customer is Always Right” Results in Liability for Employer

Labor & Employment Law Update

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We have all heard the mantra “the customer is always right,” but what is an employer to do when a customer’s request conflicts with an anti-discrimination law? As a Florida security firm learned last week, an employment decision that is based on disability violates the Americans with Disabilities Act (ADA) even if the decision is made in direct response to a specific customer complaint. Alberto Tarud-Saieh lost his right arm in a car accident. Later, he was hired by Florida Commercial Security Services as a security guard and assigned to provide security services for a community association.

Although Tarud-Saieh was qualified and fully licensed for his position, the president of the community association complained immediately, stating, “The company is a joke. You sent me a one-armed security guard.” In an effort to appease its customer, the security company removed Tarud-Saieh from his post. The EEOC brought suit on Tarud-Saieh’s behalf and on October 23, 2014, a jury found the company guilty of violating the ADA and awarded Tarud-Saieh nearly \$36,000 in lost wages; a rather hefty sum considering Tarud-Saieh earned only eight dollars an hour. So hefty in fact that local news reports quote the owner of the company stating the lawsuit will put his company out of business. In 2010 the Seventh Circuit Court of Appeals addressed the issue of customer preferences in the context of a nursing home resident who preferred to be cared for by white nursing assistants stating unequivocally, “a company’s desire to cater to the perceived racial preferences of its customers is not a defense under Title VII for treating employee’s differently based on race.” *Chaney v. Plainfield Healthcare Center*, 612 F.3d 908, 913. Courts allow only a very limited exception for gender preferences in a health-care setting in order to accommodate patients’ privacy concerns.

The bottom line: An employment decision that is based on a protected characteristic, i.e., race, gender, national origin, religion, disability or age, is unlawful even if it is prompted by a specific customer request or complaint.