



Workplace Challenges and Cases Addressing the Issues:

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- Domestic Violence Impact on the Workplace
- ADA Request for Accommodation
- Religious Practices
- Pregnancy Discrimination Act
- Arrest Record

1

Domestic violence - Impact on the Workplace

- Ramona arrives at work early and asks to speak to you, her manager, in private. Ramona's face is badly bruised and one eye is swollen shut. She tells you that she had to call the police last night because her husband beat her up. She needs time off to move herself and their four children out of the house. She is asking for two weeks off. Ramona is currently in charge of a big contract the company was just awarded.
 - You ask Ramona if her husband has ever threatened to come to her workplace, or if she is concerned he may come to her workplace. Ramona answers that she doesn't know, but she is afraid.
1. **Is there a threat of violence to the workplace? If you believe so, what action will you take?**
 2. **How will you handle Ramona's leave request?**

2



Domestic violence - Impact on the Workplace

1. Is there risk to the workplace?
 - Possibly. Action should be taken.
 - Remember, risk is not static and does change.
2. What about Ramona?
 - Available leave.
 - 22 GCA Article 4 Employment Leave for Victims of Violence.
 - Advise her of other resources available to her.
 - Demote or terminate?
 - Public policy exception to at-will employment.

Ramona Danny v. Laidlaw Transit Services, Inc. case number 78421-3, in the Supreme Court of Washington.

3



Americans With Disabilities Act - Request for Accommodation

Linda is a budget analyst. Her attendance is good, she never misses deadlines, and her work product is good. She has also been battling chronic depression. Linda asked her department manager for a flexible schedule as an accommodation for her depression. She is asking for a "maxi flex" schedule, which would allow her to work a schedule that could vary from day to day in terms of the number of hours worked and when those hours were worked. Linda submitted a doctor's note that supported her request, however it did not state the details of the proposed schedule she should be able to work.

Linda's manager denies her request because the ability to work a regular, predictable schedule is an essential function of her job.

Linda makes an appointment to see you, the Human Resources Director. She makes the same request, and provides the same doctors note.

What is your approach?

4



Americans With Disabilities Act - Request for Accommodation

Solomon v. Vilsack, D.C. Cir., No. 12-5123 (Aug. 15, 2014).

Employers cannot assume, without a careful factual analysis, that a request for accommodation is unreasonable. Additionally, company policies, truly essential job duties and the consistent treatment of other, similarly situated employees must be considered when evaluating requests for reasonable accommodation.

5



Religion in the Workplace

Your employee, Mrs. Davis, is an avid and active member of her church. She has asked you, the Human Resources Director, for time off so she may attend a church ground breaking ceremony. You deny her request because you reason that attendance at the groundbreaking was not a religious practice, and she is not entitled to accommodation. Mrs. Davis was upset when she left your office, but you are comfortable with your decision.

In hind sight, would you have handled this differently?

Later that day, an assistant manager asks you for direction on a hiring issue. He just interviewed a woman for a sales position. The applicant was wearing a stylish T-shirt, tight jeans, and a black hijab. The assistant manager didn't know whether the headscarf would be a problem with the company's "look policy" that requires employees to dress in a manner that is consistent with the kinds of clothing the company sells, and prohibits employees from wearing black clothing or "caps."

You advise the assistant manager the headscarf is not consistent with the look policy. No job offer was extended to the applicant.

In hind sight, would you have handled this differently?

6



Religion in the Workplace

The Groundbreaking Request.

What qualifies as a sincere religious belief in a particular practice?

The 5th Circuit's majority focused on the judiciary's historical reluctance to delve too deeply into an individual's professed religious belief: "This court has cautioned that judicial inquiry into the sincerity of a person's religious belief 'must be handled with a light touch, or judicial shyness.' ... Examining religious convictions any more deeply would stray into the realm of religious inquiry, an area into which we are forbidden to tread. ... Indeed, 'the sincerity of a plaintiff's engagement in a particular religious practice is rarely challenged,' and 'claims of sincere religious belief in a particular practice have been accepted on little more than the plaintiff's credible assertions.'" *Davis v. Fort Bend County*, 5th Cir., No. 13-20610 (Aug. 26, 2014).

This case will probably be appealed.

7



Religion in the Workplace

The Dress Code

The U.S. Supreme Court will consider whether retailer Abercrombie & Fitch discriminated against a woman who was denied a job because her Muslim headscarf, known as a hijab, conflicted with the company's dress code.

10th U.S. Circuit Court of Appeals held that the store's rejection of the applicant was not discrimination because she never revealed that she wore the headscarf for religious reasons and that she needed an accommodation.

Abercrombie & Fitch changed its "look policy" in 2010 to allow its workers to wear hijabs. The EEOC continues to pursue this case, stating that the appellate court ruling unfairly places the entire burden on the job applicant; sometimes job applicants aren't aware of a potential conflict between a religious practice and a company policy. The EEOC also claims that Abercrombie was clearly on notice that the applicant wore the headscarf for religious reasons because her need to wear the scarf was the basis of the job denial. Abercrombie claims that the law is clear that an employer must have actual knowledge that a religious conflict exists before it offers an accommodation. The company argues that job applicants "are not permitted to remain silent and to assume that the employer recognizes the religious motivations behind their fashion decisions."

Stay Tuned.

8



Pregnancy Discrimination Act Accommodating Pregnant Employees

Dora is the Human Resources Director at an assisted living facility. Most of the residents are elderly and require help showering, dressing, eating, and generally moving about. Jennifer, one of the nursing assistants, is pregnant. Dora asks her to obtain a doctor's note stating whether she has work restrictions. The request is made pursuant to the company policy, according to which the company will only accommodate restrictions resulting from work-related incidents. Jennifer's doctor provides a note restricting Jennifer from lifting over 50 pounds. After receiving the note, Dora informs Jennifer she is being separated from employment. Dora tells her that her pregnancy will be in the way of her work, and that the company didn't want to be liable for any harm that might come to her unborn child if she continued to work. Jennifer says that this is not fair. She reminds Dora that several months ago she assigned one of the other nursing assistants to light duty based on her badly sprained knee. Dora reminds Jennifer that employee's injury happened on the job and was covered by the company policy. Dora continues with the separation process. She reasons the pregnancy based restrictions are not covered by the company's light duty policy, and this is a pregnancy blind policy - the company has no discriminatory intentions toward Jennifer or any other pregnant employee.

- **How would you have handled this situation?**
- **Do you think the company's policy is proper?**

9



Pregnancy Discrimination Act Accommodating Pregnant Employees

Reeves v. Swift Transportation Co., 6th Cir., No. 05-5271 (May 16, 2006). A policy of assigning light-duty work only to employees who were injured on the job and consequently could not perform heavy lifting did not violate the Pregnancy Discrimination Act. The district court granted summary judgment to the company based on the fact that Reeves could not prove that Swift's light-duty policy was a pretext for pregnancy discrimination. To hold otherwise, the court said, "would result in the court affording pregnant women more benefits and better treatment than other employees, instead of equal benefits and the same treatment as intended by the act." The decision was upheld on appeal. Like the lower court, the 6th Circuit held that Swift's light-duty policy was "pregnancy blind" and that Reeves could not prove that the company treated her with discriminatory intent or that the policy was a pretext for discrimination. The policy did not grant or deny light work on the basis of pregnancy, childbirth or any related medical condition, and was strictly limited to individuals who had suffered work-related injuries.

- **Stay tuned.** The US Supreme Court has agreed to address the issue of light duty work for pregnant employees. The US Supreme Court will review *Young v. United Parcel Service* (4th Cir. 2013) in its 2014-2015 term.
- **Read the EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues.** The Pregnancy Guidance was issued in July of 2014 and contains good information on this subject.

10



Arrest Record

Lewis works as high level manager for a health care facility. One day he is arrested for allegedly committing a lewd act with a minor. Word of the arrest quickly spreads through the workplace. Several employees voice their disgust at having to work with Lewis. At the end of the day you, the Human Resources Director, are handed a petition signed by 80% of the staff demanding that Lewis be removed from the office.

What are the issues? What do you do?

11



Arrest Record

1. Arrest but no conviction
2. Reputation risk to the company
3. Employees right to protected concerted activity
4. Risk of wrongful termination

12



Any Questions?

Thank You

