



ROBINSON & COLE LLP

Labor, Employment & Benefits



Indefinite Leave of Absence Not a Reasonable Accommodation under ADA

Mark Wood worked in the Lee County, Florida Clerk's Office. He suffered from cluster headaches, which got progressively worse, requiring him to miss work. Eventually, the Clerk's Office created a new position for Wood, which could better accommodate his lengthy absences. Over the years, Wood was significantly absent from work. Wood began to suffer from a cluster headache and requested an indefinite leave of absence. A month later, Wood was terminated. Wood sued Charlie Green, the Clerk for Lee County, claiming a violation of the Americans with Disabilities Act. After a trial, a jury found in favor of Wood, ordering back pay and reinstatement. Green appealed. In [Wood v. Green](#) (3/13/03), the U.S. Court of Appeals for the Eleventh Circuit reversed the jury verdict, determining that Wood's request for an indefinite leave was not a request for a reasonable accommodation under the ADA. According to the court, Wood was not a qualified individual with a disability since the requested accommodation would not allow Wood to continue work in the present but only in the future, at some indefinite time. The court noted with approval the efforts made by the Clerk's Office to accommodate Wood's headaches by creating a new position and by allowing the significant number of discretionary leaves that Wood had taken over many years.

Inability to Control Temper, Even Originating from Disorder, Not Protected by ADA

Fred Calef was employed as a mechanic by Gillette. Over the years he received several warnings for confronting co-workers and supervisors and was eventually given a final written warning and ordered to attend counseling. Calef began treating with a psychologist who diagnosed him as suffering from Attention Deficit Hyperactivity Disorder. Calef's treatment for ADHD included counseling and intake of Ritalin®. Although his learning and speaking abilities were within normal or average range, Calef scored significantly below average on certain cognitive functions. During a particularly heated exchange involving production schedules, Calef began acting in an irrational and erratic manner, causing co-workers to fear for their safety. As a result, Gillette discharged him. Calef challenged his discharge as a violation of the Americans with Disabilities Act. In [Calef v. Gillette Company](#) (3/11/03) the U.S. Court of Appeals for the First Circuit ruled that Calef was not disabled, since his learning and speaking functions were within average range overall despite the low scores in some functions. In deciding the case under federal law (there was no companion state disability claim) the court also considered the mitigating effect of Ritalin® in concluding that Calef was not disabled under the ADA. The court also noted that, even if Calef had succeeded in establishing that he was disabled, he could not prove he was a qualified individual because, as explained by the court, the ability to handle stressful situations without making others fear for their safety was an essential function of the job, a function that Calef could not perform.

Court Sanctions Former Employee and Lawyer for Using Falsified Documents

Elvira Jimenez was employed in an administrative capacity by Madison Area Technical College. She claimed that she was harassed by College administrators because of her race. She took a leave of absence and filed a workers' compensation claim. In support of her claim she submitted letters and e-mails allegedly written by supervisors that referred to her as a "stupid Mexican" and that acknowledged the author's racist views. A letter noted that the writer was "almost [sure] your little spic ass was out the door." Administrators denied making those writings and submitted affidavits to that effect. The College wrote to Jimenez's lawyer, Willie Nunery, informing him that the alleged authors denied writing the documents and requesting to examine the original documents. Nunery rejected the College's request and instead filed a lawsuit against the College for violations under Sections 1981 and 1983 of the Civil Rights Act. The trial court found that the documents were falsified and dismissed the claim, imposing sanctions of \$16,473 against Nunery. Jimenez appealed. [Jimenez v. Madison Area Technical College](#) (2/28/03), the U.S. Court of Appeals for the Seventh Circuit upheld the sanctions, ruling that Jimenez's conduct was egregious and "so deceptive that it amounted to a veritable attack on our system of justice." The appeals court also found the appeal to be frivolous and awarded sanctions.

Lawsuit against Former Supervisor for Tortious Interference with At-Will Employment Allowed to Proceed

Karen Stanek had been employed by Yellow Pages Publishers in Michigan for 10 years as an at-will employee when John Greco became president. Stanek complained to the company's counsel that Greco was using company funds for personal purchases. Stanek claims that Greco engaged in retaliatory conduct against her after she complained, which resulted in her termination. Stanek sued Greco for intentional interference with her at-will employment relationship. The court dismissed Stanek's claim and she appealed.

In [Stanek v. Greco](#) (3/14/03), the U.S. Court of Appeals for the Sixth Circuit reversed and reinstated Stanek's claim. The court reviewed the conflicting line of rulings under Michigan law on whether a former at-will employee may sue a former supervisor for tortious interference with an at-will employment relationship. The court explained that, although Stanek has a difficult burden to prevail, and must prove that the supervisor acted solely for his benefit, without regard to the company's interest, a cause of action may exist. Accordingly, the court returned the case to the trial court for further proceedings.

Employee Entitled to Bonuses when Statute of Frauds Does Not Apply to Unsigned Contract

In 1995, Leon Schara began working for Commercial Envelope as its National Sales Director. Schara signed an employment contract in which he was promised \$500,000 in life insurance and a 1% bonus on any increase in sales, excluding pre-existing sales accounts. Commercial was unable to obtain the life insurance for Schara because of his pre-existing heart condition. The parties agreed that instead Schara would receive a 1% bonus on all of Commercial's accounts. Schara signed another contract to that effect. Schara later learned that Commercial did not sign either contract. During Schara's three years with Commercial, its sales increased by approximately \$11 million. Commercial never paid Schara a bonus. Schara was terminated in 1998 and sued Commercial for the three years of unpaid bonuses.

After a jury trial, Schara was awarded over \$300,000 for his unpaid bonuses plus interest. Commercial appealed on the basis that the judge refused to allow a jury instruction on the statute of frauds, which provides that any contract not in writing is void if it cannot be performed within one year. Schara's contract had never been signed by Commercial. In [Schara v. Commercial Envelope Manufacturing Company](#) (2/28/03), the U.S. Court of Appeals for the First Circuit affirmed the judge's decision not to allow the jury instruction. A provision in the contract permitted Commercial to sell its business at any time. Because Commercial could have terminated the contract within a year, the court found the statute of frauds inapplicable.

No ERISA Violation for Last-Minute Modification of Separation Plan

James Campbell had worked at BankBoston (and its predecessors) for 37 years when his department was sold to Investors Bank and Trust. On Campbell's last day at BankBoston, the Separation Plan was modified to deny severance pay to employees who refused an offer of employment from a company that acquired BankBoston's assets or operations. IBT did not have a position exactly like the one Campbell had performed but offered him a managerial position, which he rejected. Citing his refusal of the IBT offer, BankBoston denied Campbell's request for severance, making him ineligible to receive \$100,000 in severance pay. BankBoston had also modified its Retirement Plan to eliminate a benefit safeguard provision that guaranteed long-term employees the same level of benefits available in a prior plan. Under the new plan, Campbell's annual retirement benefits were reduced by over \$3,000. Campbell sued BankBoston, claiming violations of the Employee Retirement Income Security Act.

In [Campbell v. BankBoston, N.A.](#) (3/7/03), the U.S. Court of Appeals for the First Circuit rejected Campbell's claims. The court determined that the amendment to the Separation Plan was proper and that under the amended plan Campbell was not entitled to benefits, given his refusal of the IBT job offer. The court also determined that the elimination of the safeguard provision was not an ERISA violation, since it eliminated future expected, not vested, accruals.

Employment Discrimination Claimants Deemed Unsecured Creditors and Not Entitled to Assert Successor Liability

A few years before it filed for bankruptcy, TWA had settled pregnancy discrimination claims with the U.S. Equal Employment Opportunity Commission and private plaintiffs by instituting a travel voucher program allowing for future travel at no cost. At the time of TWA's bankruptcy filing, there were 29 additional discrimination claims pending at the EEOC. When American Airlines acquired TWA's assets through a court-approved bidding process, the EEOC and other litigants objected to the sale. Under the terms of the sale the travel vouchers and potential claims would be extinguished. In [In Re: Trans World Airlines, Inc.](#) (3/13/03), the U.S. Court of Appeals for the Third Circuit found that the employment discrimination claims were interests in property of TWA's bankruptcy estate, as defined in the Bankruptcy Code, and thus could be extinguished as part of the bankruptcy sale. The court concluded that the discrimination claims were general unsecured claims limited to any available assets of TWA. The claimants were not entitled to assert their claims against American Airlines.

OSHA Issues Final Ergonomic Guidelines for Nursing Home Employers

On March 13, 2003, the Occupational Safety and Health Administration issued final ergonomic recommendations for nursing home employers. The [OSHA guidelines](#) were designed to help reduce the number and severity of work-related musculoskeletal disorders among nursing home workers. OSHA encourages operators of similar industries, such as assisted-living centers, homes for the aged and hospitals to review the guidelines.

This is an archive of past issues. As a result, it may contain information that is not current.

The logo for Robinson & Cole LLP is displayed on a dark blue, curved banner. The text "ROBINSON & COLE" is in a large, white, serif font, and "LLP" is in a smaller, white, sans-serif font to the right.

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