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Labor, Employment & Benefits



Employer's Duty to Accommodate Disabled Employee Did Not Extend to Allowing Her to Disregard Work Schedule

When TG Missouri, an auto parts manufacturer, received documentation from Taunya Russell's physician stating that because of anxiety related to her bipolar disorder she could not work 12-hour shifts, it accommodated her request and scheduled her for 8-hour shifts instead. Shortly thereafter, on a Friday, the company advised Russell that it needed her to work on Saturday, the next day. Russell felt she was scheduled to work the extra day because she had requested a workplace accommodation and became upset. A few hours later, Russell told her manager that she needed to leave, but did not say that it was medically necessary that she leave, nor did she indicate that she was having an anxiety attack. The manager refused permission for her to leave and told her that if she left it would be considered an unexcused absence. Russell left work regardless, and failed to come to work on Saturday. Accordingly, the company terminated her employment on the grounds of job abandonment and insubordination.

Russell sued TG Missouri claiming that the company violated the Americans with Disabilities Act by terminating her instead of accommodating her disability. In particular, she claimed that she should not have been required to work more than 40 hours per week and that she should have been allowed to leave work early on Friday. In [Russell v. TG Missouri Corporation](#) (8/26/03), the U.S. Court of Appeals for the Eighth Circuit rejected her claims. The court ruled that the company appropriately accommodated her disability under the ADA by placing her on 8-hour shifts, and that it was not required to limit her work week to 40 hours. The court also held that Russell's failure to tell her manager that she needed to leave work early because of a medical necessity associated with her bipolar disorder undermined her claim that the company wrongfully failed to accommodate her by refusing permission for her to leave work early.

Prejudgment Attachment Ordered on the Home of Mean Supervisor to Secure Pending Claim of Intentional Infliction of Emotional Distress

Geraldine Benton, Pat Buonincont, Kim Cifatte and Donna Moore sued their manager, Gary Simpson, for intentional infliction of emotional distress. They claimed that his at-work conduct, including using profanity, publicly humiliating employees, and banging on cabinets, was extreme and outrageous. They also filed an application for a prejudgment remedy, seeking to attach sufficient property to secure a potential monetary award of \$500,000. After a hearing to determine if there was probable cause to believe that the employees would succeed at trial, the trial court granted their application and placed a lien on Simpson's home. Simpson appealed. In [Benton v. Simpson](#) (8/19/03), the Connecticut Appellate Court ruled that, under the circumstances, the trial court's decision to place a lien on Simpson's home was appropriate.

Plaintiff Employee's Refusal to Cooperate with Discovery Process Justified Dismissal of her Complaint

Renee Young filed a lawsuit against the Office of Senate Sergeant at Arms claiming that she had been sexually harassed, discriminated against on the basis of a disability and retaliated against by her employer. She also claimed that her employer violated the Family and Medical Leave Act. During the course of litigation, Young repeatedly failed to produce her medical records in violation of two separate court orders. She also refused to cooperate with an independent medical examination, initially refusing to meet with the examiner and then refusing to answer the basic questions asked by the examiner. In [Young v. Office of the United States Senate Sergeant at Arms](#) (8/22/03), the U.S. District Court for the District of Columbia ruled that Young's abuse of the discovery process provided sufficient grounds to justify the dismissal of her complaint.

The court also found that Young attempted to influence one witness to give false testimony and was complicit in an attempt to bribe another witness. This witness tampering constituted a second, independent basis for dismissing her complaint.

First Circuit Clarifies when Plaintiff in Discrimination Case May Be Entitled to Punitive Damages

Chungchi Che, an employee of the Massachusetts Bay Transportation Authority, filed a lawsuit claiming that his supervisor discriminated against him on the basis of his race and national origin, and retaliated against him by demoting him after he filed a complaint in violation of Title VII. At the trial, the court ruled that there was no evidence justifying submission of punitive damages to the jury. The jury ultimately ruled in favor of Che on both his discrimination and retaliation claims. The decision was appealed to the U.S. Court of Appeals for the First Circuit. In [Che v. Massachusetts Bay Transportation Authority](#) (8/26/03), the Court of Appeals concluded that the jury should have considered the question of whether Che was entitled to punitive damages.

The court explained that, under federal antidiscrimination statutes, punitive damages are authorized only if there is intentional discrimination; in other words, if there is proof that the employer acted with malice or with reckless indifference to the employee's federally protected rights. The court noted that where, as in the [Che](#) case, the MBTA retaliated against Che because he engaged in conduct protected by federal law, the jury could – but need not – infer that the employer harbored malice or reckless indifference toward those civil rights. The court cautioned that punitive damages are not necessarily appropriate in every case where there is intentional discrimination. The court explained, for example, that punitive damages are not justified in a case where the employer intends to discriminate but does not intend to violate the law, such as where the employer is unaware of the law or believes that its conduct falls within a statutory exception to the law.

Policy Requiring Applicants to Execute a Medical Authorization to Release Medical Records Is Not a Per Se Violation of the ADA

The Joy Cone Company requires all job applicants to sign a medical authorization form to release medical records as part of the initial paperwork. Applicants are advised that the company will not use the authorization to obtain medical records unless and until a job offer is actually made. In [Green v. Joy Cone Company](#) (8/21/03), Brenda Green claimed that this practice violated the Americans with Disabilities Act's prohibition against pre-offer medical inquiries. The U.S. District Court in Pennsylvania disagreed, ruling that the release form did not violate the ADA because it did not ask any questions about an individual's medical history or limitations and because the company did not actually use the form to gather any medical information at the pre-offer stage.

No Limit on Punitive Damages Awards in Voluntary Arbitration Proceedings in Connecticut

In [Medval USA Health Programs, Inc. v. Memberworks, Inc.](#) (5/22/03), the Connecticut Superior Court ruled that in a private arbitration there is no limit on the punitive damages that may be awarded by the arbitrator unless the arbitration agreement itself explicitly prohibits or limits punitive damages. The court explained that the constitutional due process guarantees that limit punitive damages awards in court actions do not apply to private arbitrations because there is no state action in a private arbitration. In this commercial arbitration (this was not an employment case), the arbitrator found that Memberworks was not liable to MedVal for any compensatory damages but the arbitrator still awarded MedVal \$5.5 million in punitive damages.

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