ROBINSON & COLE LLP
Labor, Employment & Benefits

Ability to Interact Well with Others was Essential Job Function under ADA

Patricia Cameron worked for Community Aid for Retarded Children. She suffered from anxiety disorder, which she treated with medication, and was allowed time off for psychiatric counseling related to her condition. After she was promoted to Associate Director, Cameron was involved in a heated argument with a staff member who was also the mother of a client. As a result of the argument, the staff member resigned. Cameron suffered an anxiety attack and took a few weeks off for medical leave. Upon her return, Community Aid asked for her resignation, stating that she was not qualified for the position as she could not properly interact with staff and/or clients. Cameron refused to resign and was terminated. She then filed a claim against Community Aid and its director for violation of the Americans with Disabilities Act, alleging that she was regarded as disabled because of her inability to interact well with others. In Cameron v. Community Aid for Retarded Children, Inc. (7/8/03), the U.S. Court of Appeals for the Second Circuit rejected Cameron's claim. Without deciding whether the ability to interact well with others is a major life function, the court found it to be an essential function of the supervisor's job, and one that Cameron could not perform, rendering her unqualified as a supervisor.

Court Dismissed ADA Claim by Employee Who Failed to Communicate Truthfully Her Need for an Accommodation

Margaret Conneen, a Marketing Production Manager for MBNA America Bank, was terminated from employment after several years of substandard punctuality following her medical leave for clinical depression and treatment with Effexor, a medication that caused her "morning sedation." Throughout most of the post-leave period, MBNA had allowed Conneen to work from 9:00 a.m. to 6:00 p.m. instead of the usual 8:00 a.m. to 5:00 p.m. schedule. A new manager asked Conneen to resume the 8:00 a.m. start time. Conneen agreed, without explaining to the new manager the sedative effects of Effexor or requesting a continuation of the extra hour accommodation. Unable to arrive on time except for a one-month period, Conneen was discharged for excessive tardiness. She then sued MBNA for violation of the Americans with Disabilities Act. In defending the claim, MBNA asserted that arriving at 8:00 a.m. was an essential function of the job, as bank officers had to set an example of punctuality for subordinates.

In Conneen v. MBNA America Bank, N.A. (6/27/03), the U.S. Court of Appeals for the Third Circuit ruled that an 8:00 a.m. start time was not an essential job function, particularly when Conneen had previously been allowed to start work at 9:00 a.m. without causing any disruption to the business. However, the court dismissed Conneen's ADA claim due to her failure to engage in the interactive process to find a reasonable accommodation. The court noted that an employer is required to accommodate a known disability, but is not expected to be clairvoyant. Conneen had an obligation to "truthfully communicate" the need for an accommodation and to engage in good faith in the interactive process. Her failure to do so barred her ADA claim.

Payroll and Benefit Administrator was Not Joint Employer under WARN Act

Administaff Companies provided off-site personnel management, payroll, benefits and administrative services for TheCustomShop.com, a men's clothing production plant in New Jersey. TCS began to have financial difficulties and closed its New Jersey facility without giving its employees the 60-day notice of plant lay-offs required under the Worker Adjustment and Retraining Notification Act. Administaff did not have prior notice of the plant closing. The union that represented TCS employees filed a lawsuit seeking to hold Administaff liable for the 60 days of pay plus benefits due the workers given the absence of the proper WARN notice.

In Administaff Companies, Inc. v. New York Joint Board, Shirt & Leisurewear Division, Union of Needletrades, Industrial and Textile Employees "UNITE", AFL-CIO (7/1/03) the U.S. Court of Appeals for the Fifth Circuit rejected the union's claim, finding that liability under the plain language of the WARN Act is imposed on "the employer who orders the plant closing." Since Administaff did not order the closing of the facility, it was not liable. The court also refused to adopt the "joint employer test" of the National Labor Relations Act to find Administaff liable under the joint employer theory, opting instead to apply the test of the U.S. Department of Labor. Under the DOL test, the court ruled that Administaff was not a single business entity with TCS, and therefore, was not responsible for the lack of proper notice.

HR Manager's Subjective Interpretation of Immigration Law Did Not Support Retaliation Claim

Janice Arres was a human resources administrator for IMI Cornelius Remcor, a vending machine manufacturer. Remcor received notice from the Social Security Administration that some of its employees' names or social security numbers did not match federal records. Arres believed that the employees listed on the SSA "no match" letter were undocumented aliens who had furnished bogus Social Security numbers and recommended their discharge. Her supervisor, Dan Weinick, disagreed. After consulting with the SSA and an attorney, Weinick opted instead to send letters to the employees asking them to correct any errors. Arres believed Weinick's conduct violated immigration law and she refused to process the information provided by the employees. She was then terminated for insubordination. Arres then sued Remcor alleging that she was retaliated against for following immigration law.

In Arres v. IMI Cornelius Remcor, Inc. (6/25/03), the U.S. Court of Appeals for the Seventh Circuit rejected her claim, deciding that Arres had been insubordinate and cautioning that a "human resources manager is not free to impose a different approach unilaterally" when disagreeing with the employer. The court noted that the approach followed by Remcor was appropriate under federal law in that it provided an opportunity to correct errors before discharging any employee who was not authorized to work.

Union Not Obligated to Investigative and Correct Racial Harassment on Employer Site

The U.S. Equal Employment Opportunity Commission filed a racial harassment claim against Foster Wheeler Constructors and Pipefitters Association Local Union 597, the union that supplied workers to Foster. Black workers at the Foster site were exposed to a hostile work environment consisting of racial graffiti, which included comments such as "death to all nig--rs," "F--k nig—rs," in addition to a hangman's noose, a Ku Klux Klan poster, and other slogans denigrating blacks. The claim against Foster settled, and the EEOC sought to impose liability on the union on the basis that, when the harassers and the targets of the harassment are both represented by the union, the union has the same legal responsibility to stop the harassment as the employer. In EEOC v. Foster Wheeler Constructors and Pipefitters Association Local Union 597 (7/1/03), the U.S. Court of Appeals for the Seventh Circuit rejected the EEOC's argument. The court determined that unions – unlike employers – did not have an affirmative duty to investigate and rectify discrimination by the employer. The court pointed out that the union did not control the workplace and had no power to impose discipline on its members; its power was limited to presenting grievances to the company. The company, not the union, had the legal responsibility to create a workplace free of harassment.

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