



The ADA: What if They Did It Differently?

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Let's Change the Facts!

- We provide a set of facts from a real-life ADA case
- The employer loses (perhaps)
- With your tablemates, identify what the employer should have done to avoid litigation
- Be brave and share your conversations with the larger group
- As a result, we all win, and the world is a better place

Party Pooper?

- Kevin: Please don't throw me a birthday party, I have an anxiety disorder
- But everyone liked Kevin, so they threw him a party anyway
- Kevin suffers a panic attack when he learned of the party
- Kevin skipped the party and spent his lunch hour in his car; suffered another panic attack next the day when co-workers confronted him about his "somber attitude"
- Follow-up meeting: panic attack
- Kevin is fired

Berling v. Gravity Diagnostics (2022)

As the employer, how would you handle the request to not have a party for just one employee? How would you recognize his birthday? Or not?

How do you explain Kevin's wishes to other employees who are inquiring?

What should the employer have done differently?

Hey Friend, Can You Spare an Hour?

- Laura: claims adjudicator, processes claims for non-profit
- Suffers from anxiety, bipolar and mood disorder, for which she receives treatment
- At Laura's request, employer moved workday back one hour (to 8:00 a.m. to 4:30 p.m.) to get her daughter on the school bus
- Anxiety increased after 3:30 daily, asked for schedule change back to original time
- HR director: Asked Laura whether altering her lunch break and allowing her to listen to music would help; Laura said "NO"
- Employer requests medical certification, Doctor states schedule change needed due to sleepiness and anxiety later in the day, and to attend doctors' appointments
- HR director: Denied Laura's schedule request because paperwork submitted by her medical providers or her explanation for why she needed the schedule change was insufficient to support the request

Given the combination of facts in both requests, how critical is it to obtain “more” medical facts?

Do you view the one-hour shift in her schedule to be critical to business needs? How do you show this?

Some Additional Facts . . .

- There is an unwritten policy that schedule changes for employees with performance issues are not approved because the Company wants those employees working "core business hours"
- HR Director:
 - Admitted the only alternatives he discussed with Laura were listening to music and altering Plaintiff's break schedule
 - Acknowledged that he did not believe granting Laura the schedule change would have created an undue burden on the employer

*Any Guess on the Name of the
Employer in this Case?*

Opportunities for Ohioans with Disabilities (!!)

***(Coomer v. Opportunities for Ohioans
with Disabilities)(Ct. App. Ohio 2022)***

What's the *Moral* of this Story?

Fumbling a Fitness for Duty Request?

- Keith: Machine operator, disciplined for causing unsafe conditions on assembly line
- Thereafter:
 - During multiple meetings, management observed Keith in an “upset state, using an escalated tone”
 - Keith expressed concerns about his safety at work, ability to safely return to work
- Placed on leave to obtain fitness for duty exam
- While on leave, Keith sent multiple emails to co-workers indicating that his supervisor and co-workers were “coordinating against him” and were likely to do so again in the future
- Second fitness for duty exam conducted based on emails
- ADA Problem?

Kreszowski v. FCA US, LLC (6th Cir. 2022)

Do you agree that a second fitness for duty was the right course of action here?

How would you recommend handling the emails that were sent?

What could the employer have done differently?

When is In-Person Attendance an Essential Job Function?

- Heidi started her job as an HR Generalist while she was four-months pregnant
- As she approached the end of her maternity leave and return to work, she suffered severe postpartum depression and separation anxiety
- As a result, and upon the recommendation of her OB/GYN, the employer permitted Heidi to extend her leave by a month
- Heidi eventually returned to work on a reduced, half-time schedule, which the employer permitted for two months
- Thereafter, Heidi submitted a refreshed medical certification, which explained that she should continue to work half-time for two more months
- Instead, however, the employer fired Heidi because she was "unable to return to [her] assigned position ... in a full-time capacity"

Hostettler v. The College of Wooster (6th Cir. 2018)

What questions are you asking to establish undue hardship?

What could the employer have done differently?

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