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BLOG

Employer Who Believed Employee Was Suicidal May Be Liable Under the Americans with Disabilities Act

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In a recent case out of Washington state, a court allowed an employee's Americans with Disabilities Act (ADA) claim to continue even though the employer presented evidence that the employee posed a threat to herself. An employee who had previously been diagnosed with depression and prescribed medication and psychotherapy was assigned to work an early shift. The employee sent an email to her supervisor, stating that the early shift was "stressing [her] out and exhausting [her]," and that she was "really depressed" about working that shift for an extended period of time. The employee also sent her manager a message on Facebook, stating that she had spent every workday in the previous week "dream[ing] up practical ways to kill" herself. Finally, the employee posted on Facebook that "work feels like a war zone" and that she vomited upon entering the workplace. The employer met with the employee and stated that the employee would not be allowed to work because she posed a safety risk to herself when performing her job duties. However, the employer was willing to work with the employee and her doctors in order to find possible accommodations. In response, the employee provided a letter from her psychiatrist stating that she could perform her job without an accommodation. After receiving this letter, the employer terminated the employee, reasoning that the employee and her doctors "did not address the issue of whether [the employee] remained a threat of harm, and the linkage [she] made to [her] job." The employee sued for wrongful termination under the ADA and state law. The court found that the employer had provided substantial evidence in support of their defense that the employee was a direct threat. However, the court also found that the employer had not shown that the employee had failed to engage in the interactive process to find possible accommodations in good faith, as it claimed. Rather, the court said that a reasonable jury could find that the employer was the one who failed to engage in the interactive process. Therefore, the court denied the employer's motion for summary judgment and allowed the employee's claim to proceed to trial.

Tip: Employers must engage in an interactive process with employees in good faith to determine whether a reasonable accommodation is possible, even if the employer believes that employee poses a direct threat to herself or others. Employers should be aware that information posted on employees' social networking pages may contain information about protected characteristics, such as disabilities, and can potentially lead to wrongful termination or other employment claims. Employers should be careful about accessing employees' social networking pages and consider policies or guidance for managers about social networking with employees.

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