

LEGAL NEWS FOR YOUR BUSINESS

June 2022

General Business Alert

WORKPLACE BIRTHDAY PARTY LEADS TO ADA VIOLATION

What could go wrong with throwing a surprise birthday party at the workplace? Apparently, a lot. In this case, it cost one Kentucky employer \$450,000.

Mr. Kevin Berling suffers from anxiety and panic attacks.

Birthday parties were customary in the office, but Mr. Berling asked the office manager to forego throwing him a party because it would upset him. After their conversation, Mr. Berling was under the impression that his party would be canceled, but the office manager forgot to mention this to the other staff members before she left to go out of town.

So, on his birthday, when Mr. Berling entered the breakroom during lunch, he encountered a cake and decorations set up for his birthday. Mr. Berling immediately left the office to eat lunch in his car.

Other employees noted and questioned Mr. Berling's non-attendance of his own birthday party and that he seemed very unhappy. Mr. Berling's supervisor and the company's director of business operations asked Mr. Berling to meet with them to discuss his absence and his "poor attitude."

During this meeting, Mr. Berling felt that he was about to have an anxiety attack. Attempting to stave it off, Mr. Berling clenched his fists and closed his eyes – a technique Mr. Berling learned and employed to help control his anxiety. His supervisor and the director of operations did not know what was happening and insisted that Mr. Berling discuss his feelings. Mr. Berling continued to be upset and asked them to be quiet. Mr. Berling's supervisor and the director of operations then asked Mr. Berling to leave and to hand over his keys because they felt unsafe. The company terminated Mr. Berling for his "threatening" conduct.

Mr. Berling sued the company for disability discrimination and retaliation. Under the Americans with Disabilities Act (“ADA”), it is unlawful for an employer to discriminate against its employees based on his/her disability, and this is true with respect to all aspects of the employment relationship. The ADA also prohibits employers from retaliating against individuals who engage in protected activity.

The company argued it was unaware of Mr. Berling’s disability and that it terminated him because he was a threat to other employees. The jury disagreed and awarded Mr. Berling \$150,000 in front and back pay, plus \$300,000 in emotional distress damages.

Some of the best lessons are learned from mistakes of others. Empathy, patience, and thoughtful deliberation (to say nothing of legal advice) can go a long way, for both the employer and employee. An “ounce of prevention is worth a pound of cure” also comes to mind. In dealing with any employee, but most especially an employee with any type of health condition, take it slow and, by all means, get good legal advice.

If you have questions or concerns about employer ADA violation matters, please do not hesitate to reach out to any member of Gardner Skelton’s employment team.

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PREGNANCY DISCRIMINATION LAWSUIT

When the U.S. Equal Employment Opportunity Commission (“EEOC”) employs its scarce and precious resources to sue you, you might be in trouble. DLS Engineering Associates (“DLS”), a federal contractor, recently found itself in that predicament in the U.S. District Court for the Middle District of Florida.

DLS offered a woman an engineering logistics analyst position, but when the woman told the company’s VP that she was five months pregnant, the VP rescinded the offer, saying that the company could not hire someone who was pregnant.

The Pregnancy Discrimination Act of 1978 (PDA) amends Title VII of the Civil Rights Act of 1964 and, prohibits discrimination based on pregnancy as it relates to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits (i.e., leave and health insurance), and any other term or condition of employment.

DLS paid \$70,000 in settlement (and no doubt incurred a great deal in legal fees). An expensive unforced error and another great lesson from the mistake of another. Know the law and make sure your people are trained to follow the law. We would be more than happy to help you with both.



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