Reasonable Accommodations - When An Orange Juice Cost Dollar General More Than $1

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A recent Sixth Circuit decision reminds employers across the country that refusal to explore potential reasonable accommodations for employees with disabilities may come at a steep price. In *Equal Employment Opportunity Comm'n v. Dolgencorp, LLC*, 2018 WL 3734283 (6th Cir. 2018), employer Dollar General was held accountable for its failure to engage in discussions about reasonable accommodations and for its discriminatory termination of a sales associate. The decision reinforces for employers the importance of engaging in the interactive process, even when it is triggered by a simple request by an employee, such as keeping a container of orange juice next to her.

The Facts

The facts in this case are straightforward. Linda Atkins worked for Dollar General as a Sales Associate, beginning in 2009. She was a good employee, earning annual raises and a promotion to Lead Sales Associate. She is a type II diabetic, and every so often suffers from hypoglycemia, or low blood sugar levels. During one of her low blood sugar episodes, she needs to ingest a certain amount of glucose or a variety of symptoms may result, such as seizures, fainting, or, eventually, death. Her preference of glucose ingestion is orange juice for two reasons: it is easy to measure and it works quickly.

Atkins asked her employer for permission to keep orange juice at her cash register, in advance of one of these emergent episodes. Her supervisor said no, claiming that it violated store policy. She in fact did suffer two hypoglycemic episodes in 2011 and 2012, each at a moment when she was working alone, and customers were present. As no other employee was upfront with her, she was unable to retrieve orange juice from her own cooler in the back break room. Because these were emergencies, both times she took an orange juice from a store case near the cash registers. Both times, she immediately paid for the orange juice and informed her supervisor.

Soon thereafter, Dollar General began investigating employee theft and merchandise shrinkage. When speaking with Atkins, she mentioned the two emergency occasions when she took and drank the juice from the store case. She was fired in 2012 for violating the company's "anti-grazing" policy: the policy states that employees may not consume any merchandise before they have paid for it.

Atkins filed a complaint with the Equal Employment Opportunity Commission, who in turn brought the instant lawsuit. Atkins eventually intervened as a plaintiff. Her claims were for failure to accommodate under the Americans with Disabilities Act ("ADA") and discriminatory discharge under the ADA and Tennessee state law. A jury found against Dollar General, and awarded Atkins back pay, compensatory damages, and attorney's fees and expenses.

The Decision

Dollar General argued two procedural points on appeal, and relevant here, that it should win as a matter of law on Atkins' reasonable accommodations and discrimination claims. The Sixth Circuit disagreed.

Reasonable Accommodations

The Sixth Circuit first found that Dollar General had failed to engage properly in the interactive process. When Atkins requested permission to keep juice at her register, this should have triggered the interactive process, and Dollar General should have discussed possible reasonable accommodations. This was particularly true, as Dollar General outright denied her first request.

Dollar General argued that there are other methods of glucose administration that Atkins could have used instead of drinking orange juice, such as glucose tablets or packets of honey. It claimed that because of this, it was under no duty to accommodate Atkins with permission to keep juice nearby.

The Sixth Circuit was unconvinced: Dollar General failed to discuss any options with Atkins at the time, but rather "categorically denied" her request for her chosen accommodation. Dollar General had the duty to "explore the nature of the employee's limitations, if and how those limitations affected her work, and what types of accommodations could be made." The failure to explore possible reasonable accommodations, and to deny the very first accommodation mentioned, was Dollar General's downfall. The fact that alternatives exist for reasonable accommodations that an employer may prefer is irrelevant if the employer never discusses them with the employee.

Disability Discrimination

Similarly, the Sixth Circuit found that Dollar General discriminated against Atkins when it fired her. An employer cannot categorically deny a requested reasonable accommodation, fail to engage in the interactive process, and then balk when the employee is forced to engage in an accommodation that violates a policy.

Dollar General claimed that her violation of store policy was a legitimate nondiscriminatory reason for firing Atkins. Dollar General additionally argued that Atkins had not demonstrated any animus by the company against individuals with disabilities.

The Sixth Circuit found, however, that animus was not required. Rather, causation was the crucial factor. Instead, Atkins sufficiently demonstrated Dollar General's failure to accommodate, which the Sixth Circuit found constituted direct evidence of discrimination. She violated policy, but only because of Dollar General's failure to reasonably accommodate her.

Therefore, the Sixth Circuit found that the jury reasonably found in favor of Atkins, and affirmed the jury's finding that Dollar General was liable on both claims.

Takeaways

Although it contains a simple set of facts, this case provides a wealth of reminders for employers.

Triggers

Be aware of employee triggers of the reasonable accommodations interactive process. Do not simply deny an employee an accommodation he or she requests, and then end the conversation. The initial request should be explored. If that option is unacceptable for some reason, employers must continue the conversation about other reasonable accommodations. Atkins' supervisor here could have prevented much of the subsequent events, and litigation, if she had simply listened, and begun an actual conversation about reasonable accommodations with Atkins.

Training

Ensure supervisors and managers are properly trained on reasonable accommodations. As noted above, this whole chain of events may have been prevented if Atkins' supervisor had recognized that the interactive process was triggered. Train all supervisors and managers to be aware of these triggers, and to engage in the process or know who to go to when they suspect an accommodation will be necessary.

Terminations

Vet each and every termination decision. Analyze the individual employee and his or her individual circumstances. Even when terminations are at the prerogative of the employer, consider whether an employee falls into a protected group. Such an analysis could lead an employer to understand and analyze any context or circumstances that require further inquiry, or that might mitigate against termination at all. Here, such an analysis may have led Dollar General management to Atkins' history, their own failures, and possibly the prevention of the litigation.