Employer's E-mails Revive ADA and USERRA Claims

Supervisors and managers must think twice before sending e-mails, as a recent decision from the federal appeals court in Chicago reminds us. The Seventh Circuit Court of Appeals, which oversees Wisconsin, Illinois and Indiana, recently held that supervisors' e-mails showing frustration over an employee's military and disability-related absences were sufficient to support a claim under the Americans with Disability Act (ADA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Luz Maria Arroyo, a U.S. Army Reservist, worked for Volvo for six years until her termination in 2011. During that time, Volvo granted her more than 900 days of military leave, covering multiple deployments as well as military training and other activities. After being diagnosed with post-traumatic stress disorder, Volvo also provided Arroyo family and medical leave, disability leave under the ADA, and additional accommodations to manage her panic attacks.

Despite these accommodations, Arroyo began arriving between one and ten minutes late to work for reasons unassociated with her disability. Consistent with its policy, after accruing five points for such unexcused tardiness, Volvo terminated her employment. Arroyo sued alleging that Volvo terminated her in violation of USERRA and the ADA. The district court ruled in Volvo's favor, reasoning that Arroyo's attendance violation was a terminable offense under Volvo's policy. The Seventh Circuit reversed this decision and sent the case back for a jury trial.

Central to the court's decision was a series of e-mails among Arroyo's supervisors that expressed frustration with her military and disability absences. The e-mails made comments such as:

- Arroyo was taking too much time off;
- her absences were causing an undue hardship to the business; and
- she was "becoming a pain."

The court reasoned that the supervisors' frustrations, as expressed in the e-mails, could support a finding that her military leave was a motivating factor leading to her termination and could also establish discriminatory motive under the ADA.

POSTED:

Apr 4, 2016

RELATED PRACTICES:

Labor and Employment
https://www.reinhartlaw.com/practices/labor-and-employment

RELATED PEOPLE:

Katie D. Triska
https://www.reinhartlaw.com/people/katie-triska

Robert S. Driscoll
https://www.reinhartlaw.com/people/robert-driscoll

Furthermore, the court held that Volvo did not show that it would have fired Arroyo regardless of her military status because Volvo did not enforce its policy as rigorously against other employees. Of the five other employees who were disciplined for being one to ten minutes late, only one was terminated for such conduct.

This case is a reminder that managers and supervisors should be trained concerning appropriate e-mail correspondence. They must take care when drafting and sending e-mails, and avoid commentary that can be construed as discriminatory—especially when it pertains to individuals in protected classes—because such e-mails will be released during litigation. Employers should train their supervisors to not send any e mails that suggest annoyance or frustration with an employee's protected leave.

Additionally, although employers have the right to require employees to comply with workplace policies, they must consistently enforce such policies in order to use them to defend against a charge of discrimination. As was the case here, a lengthy record of accommodating an employee's absences may not be enough to rebut a claim of unlawful discrimination.

If you have any questions about this case, please contact Rob Driscoll, Katie Triska or your Reinhart attorney. They will be happy to assist you.