



October 8, 2019

Recent Eighth Circuit Decision Demonstrates Importance of Training Supervisors

One of the most effective ways to combat an employee-initiated discrimination lawsuit is to train your supervisors and managers on how to spot and respond to scenarios that are the catalyst for such lawsuits. If a company's supervisors and managers are ill-equipped to recognize and handle a disability accommodation request, for example, the company may be exposed to the risk of violating the ADA and other applicable laws. Below is a summary of a recent opinion from the United States Court of Appeals for the Eighth Circuit that proves this very point.

Last week, in *Garrison v. DolgenCorp, LLC*, the Eighth Circuit reversed the district court's grant of summary judgment in favor of Dollar General on the plaintiff's failure to accommodate claim. The court affirmed summary judgment in favor of Dollar General on the plaintiff's other claims (retaliation in violation of the ADA and FMLA interference).

In *Garrison*, the plaintiff was a lead sales associate for Dollar General. The plaintiff suffered from anxiety, migraines and depression, and she inquired into taking a leave of absence. After the plaintiff sent a text to her supervisor inquiring about the procedure for requesting a leave of absence, her supervisor responded that she would ask the district manager. When the plaintiff followed up a week later, her supervisor told her that (1) no leave of absence was available, (2) she could remain with Dollar General so long as she could "do the job and not be sick all the time," and (3) she should "read the employee handbook."

The plaintiff and her supervisor later met in person regarding the leave of absence, but the supervisor reiterated that no form of leave was available even after the plaintiff "made [it] clear that she was seeking a leave of absence due to anxiety and depression." Shortly thereafter, the plaintiff went to the emergency room for gastritis and anxiety, and she missed work. The plaintiff requested to use vacation time to cover her emergency room visit and the rest of the work week; however, because other associates had requested vacation time before the plaintiff, her request was denied. The plaintiff then quit and sued Dollar General. The district court granted summary judgment to Dollar General on all the plaintiff's claims, including her failure to accommodate claim.

The Eighth Circuit reversed the district court in part, holding a reasonable jury could find the plaintiff met all the requirements of a failure to accommodate claim; namely, that she put Dollar General on notice that she was seeking an accommodation for her disability and that Dollar General did not adequately engage in the interactive process. The Eighth Circuit reasoned that the plaintiff "repeatedly told [her supervisor] that she wanted to take a leave of absence," and, "even [though the plaintiff] never referenced the ADA," Dollar General knew the plaintiff suffered from various medical ailments. The court held a reasonable jury could find that "Dollar General was aware of [Plaintiff's] disability, that she requested an accommodation [for the disability], and that Dollar General, had it engaged in the interactive process, could have reasonably accommodated her." The court further reasoned that Dollar General could have accommodated the plaintiff, because the supervisor testified that, had the plaintiff been entitled to FMLA leave, the supervisor would have found a way to provide the plaintiff this leave.

The court affirmed summary judgment in favor of Dollar General on the plaintiff's retaliation claim as Dollar General took no adverse employment action against the plaintiff. The court also affirmed summary judgment

in favor of Dollar General on the FMLA-interference claim because the plaintiff did not follow Dollar General's "usual and customary notice and procedural requirements" for requesting FMLA leave.

This case illustrates the importance of managers and supervisors understanding that just because employees don't use "magic words" such as accommodation, disability or the ADA, employers still may be obligated to engage the employee in the "interactive process" and assess an employee's accommodation request. Recognizing accommodation requests is only one example of the numerous issues a supervisor must understand and act upon, and, because of this, training supervisors on how to identify issues that could trigger serious legal implications for your organization is a very wise decision.

If you have questions on how your managers and supervisors can be trained on these topics, please reach out to your Kutak Rock employment attorney or any of the attorneys in the [Employment Law Group](#), and we would be happy to discuss this with you. You may also visit us at www.KutakRock.com.

This Client Alert is a publication of Kutak Rock LLP. It is intended to notify our clients and friends of current events and provide general information about labor and employment issues. This Client Alert is not intended, nor should it be used, as specific legal advice, and it does not create an attorney-client relationship.

© Kutak Rock LLP 2019 – All Rights Reserved. This communication could be considered advertising in some jurisdictions. The choice of a lawyer is an important decision and should not be based solely upon advertisements.