HR Weekly Podcast

September 3, 2014

Today is September 3, 2014, and welcome to the HR Weekly Podcast from the State Human Resources Division. This week's podcast deals with a recent lawsuit filed by the United States Equal Employment Opportunity Commission, or EEOC.

According to a press release issued by the EEOC on July 2, 2014, the drugstore chain Walgreens has agreed to pay $180,000 to a longtime employee with diabetes and to implement revised policies and training to settle a federal disability discrimination lawsuit filed by the EEOC. According to the lawsuit, former cashier Josefina Hernandez, who has Type II Diabetes, was terminated by a San Francisco Walgreens because of her disability after she ate a bag of chips costing $1.39 during a hypoglycemic attack in order to stabilize her blood sugar level. Hernandez was discharged for violating the company's "anti-grazing" rule. According to Walgreens, the policy is applied uniformly to all employees and is in place because the company loses more than $350 million per year because of worker theft.

Hernandez worked for Walgreens for almost 18 years with no disciplinary record, and Walgreens was aware of her diabetes. Hernandez had permission from Walgreens for the prior 13 years to bring candy to work with her in case of an attack, but she did not have any with her on the day in question. She allegedly tried to pay for the chips soon after taking them, but there was no one at the counter where employees paid for store merchandise. The company security officer testified, however, that he did not understand nor did he seek clarification when Hernandez wrote, "My sugar low. Not have time," in reply to his request for an explanation of why she took the bag of chips before paying for them.

Terminating a qualified employee because of a disability is a clear violation of the Americans with Disabilities Act, or ADA. The law also requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would impose an undue hardship on the employer. After an investigation by the EEOC, and after attempting to resolve the case through pre-litigation conciliation efforts, the EEOC filed the lawsuit in federal court.

On April 14, 2014, the district court judge noted that "Walgreens has failed to allege any misconduct that is unrelated to her disability," and denied Walgreens' motion for summary judgment. At the hearing, Walgreens' legal counsel acknowledged Hernandez as a long-term valued employee with a very good track record, and described her termination as a "harsh result" perceived by the EEOC as unfair.

"Not only was this harsh and unfair, but it was illegal, and that's why the EEOC sued to correct this wrong," said the EEOC's attorney. "People may think this case revolves around theft, but the real issue is how a company responded to a valued 18-year employee, whom it knew for 13 years to be diabetic, and who attempted to pay for the chips after she recovered from her hypoglycemic attack."

According to the consent decree settling the suit ordered by the district court judge, Walgreens agreed to pay Hernandez $180,000 and to post its revised policy regarding accommodation of disabled employees on its employee intranet site. The company will also provide anti-discrimination training, make periodic reports to the EEOC, and post a notice regarding the decree for three years.

State agencies should consult with human resources and legal counsel when necessary for clarification on the requirements of the ADA. Thank you.