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Virginia Workplace Law

So You Want A Bigger Office? Showing Complaining Employee the Door Is Costly

By: Karen Elliott. *Wednesday, July 20th, 2011*

The newest in what is expected to be a long line of new cases to be filed under the revised ADA is the "cubicle case." A worker at the University Medical Center in Nevada was fired for being unable to perform her job after she complained that her confined workspace caused her psychological distress due to her claustrophobia. Rather than go to trial, the county settled with the worker for $150,000.

While many are poking fun at the case and it is making headlines across the HR blogosphere, the case serves as a stark wake-up call for employers.

No longer, can you say to an employee, "If you don't like the working conditions here, you may choose to leave." If an employee has a workplace complaint that could be linked to a health condition, you must ask yourself as the employer, "Do I have a need to accommodate this request?" In the Nevada situation, the employee had debilitating claustrophobia. She claimed the employer refused her request to move her to a more open area.

Under the new ADA, practically every health condition of significant duration qualifies as a "disability." In fact, the new ADA requires employers not to dwell on the question of whether the condition is a disability or not. The ADA requires employers to engage in an interactive process with the employee to determine whether or not a reasonable accommodation exists. If the employer engages in this process in good faith, the employer will protect themselves from punitive damages. If the employer fails to engage in this process, the employee's damages (and your risk of suit) increase considerably. (Punitive damages are awarded based upon the number of employees employed. The range is from a low of $50,000 (15-101 employees) to high of $300,000 (more than 500 employees).)

The lesson learned from the cubicle case is that when employees complain about workplace conditions, employers, must pay attention and determine whether or not the complaint about the condition or requirement is linked to a health issue for the employee. If it is, even if the complaint

appears frivolous, employers must in good faith engage in the reasonable accommodation process. This is a huge mindset change for employers. But if you remember that under the new ADA “We are all disabled now,” and train your managers to report such complaints so that you can initiate the interactive process, you will go a long way toward avoiding becoming the most recent headline.

If you need assistance in learning about the new ADA and its requirements, or with training your managers, the employment lawyers at Sands Anderson are available to assist.