



RIGHTS STUFF

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FMLA and ADA Claims May Go to Jury

Terry Baier began working for Oakbrook Toyota in Westbrook, Illinois, in August, 2005. He was promoted several times and became general sales manager in December, 2007.

Baier was diagnosed with a damaged aortic valve and had surgery on October 1, 2011. His surgery was to be followed by 12 weeks of rehabilitation. He asked Oakbrook for leave under the Family and Medical Leave Act (FMLA) to recover and returned to work late in the month, wearing a visible defibrillator.

Baier said he gave his supervisor, Alex Syed, documentation showing that he could work only 40 hours a week. Syed said he had no obligation to make sure Baier didn't work more than 40 hours a week. When Baier complained about having to work until midnight, Syed said, "That's your job." When Syed went out of the country for a vacation, John Barrett filled in for him. Barrett told Baier, "Don't die at the desk or I am going to drag you outside and throw you in the ditch next to the road."

Shortly after, according to Baier, the owner of the company, Bob Rohman, came into the dealership and threatened to demote him. Baier said that he had never before been reprimanded or disciplined. He expected to be demoted the next day, but instead was fired, allegedly for using profanity at work. He filed a com-

plaint alleging that Oakbrook had violated the FMLA as well as the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA).

Oakbrook's version of events was quite different from Baier's, as is usually the case. Oakbrook claimed that Baier scheduled his own work time and did not need anyone's permission to leave work. The company said Baier was welcomed back to work after his medical leave and restored to his job, without any harassment or mistreatment. And Oakbrook said that many employees had complained about Baier's management, including his alleged use of profanity and racial slurs.

Oakbrook moved for summary judgment, meaning their case was so strong there was no need for a full trial, and largely lost that argument.

The Court noted that even though Baier provided medical documentation that he needed to work reduced hours, his written schedule said he had to work from 8 a.m. to 9 p.m., six days a week. When he complained, he was told "That's your job." The company never gave him notice of his FMLA rights, and apparently no one at the company knew that under the FMLA, he had the right to take reduced leave. Oakbrook fired him only thirteen days after he returned to work. Such timing

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Requiring Employee to Undergo Mental Health Exam Not Necessarily Violation of ADA

Leon Coursey joined University of Maryland Eastern Shore (UMES) as a faculty member in 1972. He became a full professor in 2001. In late 2004, several female students filed complaints against him, saying he made inappropriate sexual comments, belittled students in class, graded arbitrarily and unfairly favored some students. An internal investigation found the complaints to be credible. It also found that Coursey tried to retaliate against the students who complained. He was required to participate in sexual harassment training.

Three years later, some professors complained about Coursey, saying he was overly aggressive with colleagues and disparaged them in front of students. They also said he didn't comply with UMES policies. Shortly thereafter, some students filed complaints against him, saying he was erratic and verbally abusive, had "lost it and gone berserk" in class and was unstable.

The chair of the department sent Coursey a memo summarizing the concerns about his conduct

and requesting a meeting with him as soon as possible. Apparently the meeting was never held. Shortly after the memo was sent, a professor heard Coursey ranting and yelling at his students, saying, "I am the highest ranking professor on this campus and no one can touch me."

The administration placed Coursey on paid leave. During an interview to evaluate his status, Coursey was "civil" but "unresponsive and vague." The dean recommended that he receive a mental health evaluation before returning to the classroom. He refused and filed a complaint of disability discrimination with the Equal Employment Opportunity Commission (EEOC). He was eventually fired. He sued, alleging a violation of the Americans with Disabilities Act (ADA) and retaliation for having filed his EEOC complaint. He lost at the trial court level and recently at the Court of Appeal level as well.

The ADA does not allow employers to require employees to undergo medical exams unless

doing so is shown to be job-related and consistent with business necessity. But if there is a question about the employee's ability to do the job, the employer may require such an exam. It's often called a fitness for duty exam, and is permissible if the employer can identify legitimate, nondiscriminatory reasons to doubt the employee's capacity to perform his duties. In this case, the Court said that complaints about Coursey's outbursts, erratic behavior and disregard for university policies were sufficient grounds for requiring such an evaluation.

The Court found that the university had legitimate, nondiscriminatory, nonretaliatory reasons for terminating Coursey: the complaints from students and professors, documented violations of university policies and his refusal to undergo a mental health exam as required.

The case is Coursey v. University of Maryland Eastern Shore, 30 A.D. 185 (4th Cir. 2014).

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is not conclusive proof of a violation of the FMLA or of the ADA, but it raises suspicions.

The Court noted that Baier claimed he did not curse at an employee as alleged, and that foul language is commonplace at Oakbrook. Thus, the Court did not

give much credence to Oakbrook's explanation for the termination. The fact that Barrett questioned how Baier could show up for work wearing a defibrillator and said "There is no f_ _ _ing way that Terry Baier is going to drop dead on my watch at Oakbrook Toyota" did not help the company's case. The

Court did dismiss the ADEA claim.

The case is Baier v. Rohr-Mont Motors, Inc., d/b/a Oakbrook Toyota in Westmont, 2014 WL 6434584 (N.D. Ill 2014).



Commission on the Status of Women Seeks Nominations for Annual Awards

The City of Bloomington's Commission on the Status of Women is seeking nominees for the Woman of the Year, Emerging Leader and Lifetime Contribution Awards. The deadline for submission of nominations is January 23. The awards will be presented during Women's History Month in March.

The Woman of the Year Award recipients are women who have improved the quality of life for other women through inspiration, community service or professional accomplishments above or outside of their normal job responsibilities. Recipients also serve as positive role models for girls and women and have made

outstanding contributions to the community.

The Lifetime Contribution Award recognizes women whose work has significantly advanced the status of women through leadership and service. The Emerging Leader Award acknowledges women with a relatively short (fewer than five years) history of significant achievements and recognizes their potential for future contributions.

Nomination forms are available in the City of Bloomington's Community and Family Resources Department at 401 N. Morton St., Ste. 260, or online at www.bloomington.in.gov/csw.

Forms also may be obtained by contacting Program Specialist Sue Owens at owenss@bloomington.in.gov.

Nominations should include the name, address, telephone number and e-mail address of the nominee, in addition to the reasons why the nominee merits the award. The nominator also should include his or her name, address, telephone number and e-mail address. Send completed nomination forms by e-mail to owenss@bloomington.in.gov or by mail to the Commission on the Status of Women, PO Box 100, Bloomington, IN 47402.

911 Services Becoming More Accessible Indiana Already Offering New Service

In an emergency, we all know to call 911. But that can be problematic for people who can't hear or speak. There are services that enable people with these disabilities to communicate over the phone, but they require another step in the process and take a bit of time, time people may not have during an emergency.

New rules from the Federal Communications Commission will help address this problem by requiring all wireless carriers to allow users to send text messages when calling 911. AT&T, Verizon, Sprint and T-Mobile already provide this ser-

vice. With the new rule, smaller telecommunication companies will have to do so as well.

Such services will work only if the emergency call center has the technology to receive and respond to such messages. As of May 2014, only two states offered this service: Indiana and Vermont. State police advise people using text-to-911 to provide their location and the nature of their emergency in the first text message, as cell phones provide dispatch centers with only an approximate location. They advise never using abbreviations or slang in text-to-

911 messages, to avoid misunderstandings.

Monroe County Central Dispatch installed the text-to-911 software on its computers in May of 2014 and began using it in June, after training its staff.

Experts advise using voice to call 911 whenever possible. Dispatch workers need to gather a great deal of critical information quickly, and voice is faster than texting 911. But when it's not possible to use voice, the ability to use text messages to notify dispatch workers about an emergency could prove life-saving.

BHRC Launches New Fair Labor Initiative

The BHRC recently launched the Fair Labor Initiative, a new program to encourage fair labor practices in Bloomington eating establishments. A brief ceremony was held Monday, December 8, at City Hall. Representatives of local restaurants, BHRC members and Indiana University students of Professor Stepanka Korytova's class were present.

The IU students assisted the Commission in recruiting an initial group of restaurants to sign on to the Initiative. Managers of these restaurants have signed a compliance agreement affirming their fair labor practices and were awarded specially-created decals to post in the windows of their establishments. The Fair Labor Practice decals are round with a yellow background and feature a knife, fork and spoon graphic, along with

the words, "This establishment affirms its compliance with fair labor practices."

The participating restaurants have voluntarily pledged that they comply with the following requirements:

- Minimum wage, overtime, tip-paying and record-keeping requirements, as required by the Fair Labor Standards Act;
- Training, safety gear and poster requirements, in compliance with the Occupational Safety and Health Act;
- Equal employment laws that prohibit discrimination and harassment on the basis of legally-protected categories;
- Unemployment insurance requirements;
- Workers' compensation

requirements;

- Appropriate deductions and withholding taxes such as Social Security and Medicare;
- All applicable provisions of the Affordable Care Act; and
- All applicable provisions of the Family and Medical Leave Act.

Another planned component of the Fair Labor Initiative will offer free resources to interested restaurant owners, managers and staff to help inform them of all applicable fair labor practice requirements.

For more information, to sign on to the Fair Labor Initiative or to request resources regarding applicable fair labor requirements, please call Barbara McKinney at 349.3429.



Byron Bangert, Chair of the BHRC; Matt and Reagan O'Neill, owners of Runcible Spoon; IU student, Danielle Bryant and Prof. Stepanka Korytova.