

Employee's Disability Doesn't Shield Her From Termination

PS&H employment Partner and Chair of the Labor & Employment Group, Alicia Samolis, was quoted in Massachusetts Lawyers Weekly discussing a case involving the termination of an employee who subsequently disclosed that she was dealing with post-traumatic stress disorder (PTSD).

In the case of *Trahan v. Wayfair Maine*, the 1st U.S. Circuit Court of Appeals ruled that Wayfair did not discriminate against an employee by firing her for misconduct she subsequently attributed to PTSD. The ruling affirmed an earlier summary judgment by the U.S. District Court for the District of Maine.

When the employee learned she was about to be terminated, she disclosed for the first time that she was a veteran with PTSD. She also blamed mistreatment by co-workers for her outbursts and asked to either be moved or to telecommute, which Wayfair denied before proceeding with her termination. The employee argued that Wayfair violated the Americans with Disabilities Act (ADA) by refusing to grant her requested accommodation of her condition.

Alicia found interesting the court's analysis went beyond just the timing of the request. The court found that even if the employee had requested her accommodation earlier, working at home would have placed an "undue burden" on the Wayfair because they had no work-at-home policy at that time and lacked the technical capability to facilitate that.

While the finding was positive for the employer in the case, Alicia noted "[t]his defense may not exist for many employers going forward, now that they've implemented work-at-home policies to deal with coronavirus," Alicia said. "Even when this is over, it will be hard to tell the courts such a request can't be accommodated, since the employer found a way to make it work during the coronavirus period."

Finding for defendant Wayfair, Senior Judge Bruce M. Selya wrote, "It is uncontroverted that Wayfair fired other employees when it learned that they had indulged in emotional outbursts in the workplace or given vent to fits of anger there." He said Wayfair enforced the rules consistently despite the employee's assertions to the contrary.

Selya continued, saying that "given the timing of the requests, implementing them would have required forgiveness of her fireable misconduct and a fresh start at Wayfair. Nothing in the ADA demands that an employer accord an employee — even an employee with a disability — such a second chance."

[Click here to read the full article.](#) (subscription required)

Date Created

April 30, 2020