

Client Bulletin

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Preventing a Discrimination Claim is Easier than Defending One....

A recent U.S. federal appellate decision illustrates how easily a company can end up in protracted litigation defending employment discrimination claims arising from, at first glance, what seems to be several harmless employment decisions made by front line managers. In order to avoid costly litigation, a company can minimize its exposure to discrimination claims by periodically updating its interviewing practices, employment policies, termination procedures and management training programs.

In *Baker v. The Home Depot*, __ F. 3d __ (2d Cir. Apr. 19, 2006), the federal appellate court reversed the trial court's decision dismissing a religious discrimination case because the trial court had found that Home Depot's offer to adjust an employee's work shift was a reasonable accommodation under the Civil Rights Act.

Mr. Baker joined The Home Depot in March 2001 as a full time sales associate and was assigned a flexible work schedule with evening and weekend shifts. In September 2001, he married, relocated and became a congregant of his wife's church. After relocating, Mr. Baker reapplied for a position at a local Home Depot store.

During his interview, Mr. Baker explained that his religious beliefs required him to have Sundays off. The interviewer advised this would not be a problem and hired Mr. Baker. Mr. Baker was assigned shift work with Sundays off for the next year or so.

In September 2002, a new store manager advised Mr. Baker that he needed to be fully

flexible, which required working on Sundays. After Mr. Baker refused to report to work for a Sunday shift for religious reasons, the store manager met with Mr. Baker and offered a later Sunday shift which would permit him to attend morning church service. Mr. Baker refused the offer, advising that "it was a requirement and belief that he could not work at all on Sundays." The manager also offered Mr. Baker the option of part-time employment which Mr. Baker rejected because he needed to have a guarantee of a 40 hour work week to qualify for employee benefits. The following Sunday, Mr. Baker failed to report for his shift and was terminated for unexcused absences.

This case illustrates four opportunities Home Depot had to prevent this discrimination claim:

- During the Interview
- After the Management Change
- At the time of Counseling
- Prior to Termination

The decisions were made by several managers, which in the moment made sense, but over time may have opened the door to the religious discrimination claim and protracted litigation.

The Civil Rights Act prohibits discrimination in employment on the basis of religion. 42 U.S.C. § 2000e-2(a)(1). The Act also provides that it is an unlawful employment practice for an employer not to make reasonable accommodations, short of undue hardship.

The appellate court's disagreement with the trial court was based on Mr. Baker's claim that the "shift trade" offered by Home Depot was not a reasonable accommodation because it accommodated only one of Baker's concerns, that of missing church services on Sunday, but failed to address Baker's other objection to working on Sunday based on his religious belief that Sunday is "a day of rest and meditation."

The appellate court stated that the “offered accommodation cannot be considered reasonable because it does not eliminate the conflict between the employment requirement and the religious practice.”

The appellate court remanded the action without offering an opinion as to whether Home Depot’s alternative of part-time employment constituted a reasonable accommodation. The appellate court also directed the trial court to address Home Depot’s argument that any further accommodations to Mr. Baker would result in undue hardship to Home Depot, an argument seemingly undermined by Home Depot’s previous actions.

Home Depot may ultimately prevail in *Baker*, but the costs associated with this protracted litigation certainly far exceed the costs of prevention. Often times, front line managers do not have the training or time to deal effectively with spontaneous employment decisions which may seem harmless at the time, but can result in unnecessary litigation. Interview guidelines, employment policies, discrimination training and severance options are tools corporations can equip managers with to avoid thorny (and expensive) employment discrimination disputes.



If you would like more information on protecting your company against costly employment discrimination litigation please contact:

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