

Court Shoots down ADA Discrimination Claim Premised on Employer's Alleged Embarrassment

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It would never occur to most employers that “embarrassment” could serve as the grounds for a disability discrimination claim, but that’s exactly what an employee attempted to argue in *Lester v. City of Lafayette*. In this case, a federal district court judge rejected a former city employee’s argument that she was fired because officials from the City of Lafayette, Colorado (the “City”) were embarrassed by her disabled daughter.

The employee’s novel legal theory presented a twist on a relatively obscure provision of the Americans with Disabilities Act (the “ADA”) in that under the ADA, an employer can be held liable for an adverse employment action undertaken because of its knowledge of the affected employee’s relationship with a disabled person. This is sometimes called the “association provision” of the ADA.

Employee Lester formerly served as the City’s Senior Services Manager. In her lawsuit, she alleged that her association claim arose from an incident where law enforcement was called to her home to quell a dispute between the employee and her daughter. The dispute was partly caused by the daughter’s disability, and she alleged that the City was embarrassed by the resulting splash back to its reputation. The employee also alleged that she experienced discrimination because her daughter was on the City’s health insurance plan. She based these allegations solely on statements by managers regarding the importance of the City’s Employee Wellness program in lowering insurance premiums and encouragements for employees to sign up.

The City denied that the employee’s termination had anything to do with her daughter’s condition, and maintained that it fired the employee for failing to follow bidding protocols in connection with a Senior Center flooring project and for steering the \$10,000 job to a friend without the required City Council approval. The City also cited the employee’s allegedly aggressive behavior during the incident at her home, stating that the employee exhibited “conduct unbecoming to a City employee.”

To sustain a cause of action for association discrimination, a plaintiff must demonstrate that the adverse employment action “occurred under circumstances raising a reasonable inference that the disability of the

relative or associate was a determining factor in the employer’s decision.” *Den Hartog v. Wasatch Acad.*, 129 F.3d 1076, 1085 (10th Cir. 1997). In this case, however, the court held **that the employee had failed to raise such an inference**. Regarding the embarrassment allegations, the court stated that the employee had not provided any authority establishing that embarrassment could suffice as a predicate for an association claim. Moreover, even without supporting case law, the evidence presented did not support the employee’s theory because the incident at her home “was only tangentially related to her daughter’s disability, if at all.”

The court further held that generalized statements about the City’s employee wellness program were insufficient to raise an inference of association discrimination. Significantly, the employee had presented no evidence that the City was tracking the costs of her daughter’s treatment – or even that her daughter’s health care costs were particularly high. “To hold otherwise would potentially open up any city or business to liability for adopting and encouraging employee wellness programs as a means for lowering health care costs,” the court stated.

Accordingly, the Court granted the City’s motion for summary judgment and ordered the case dismissed with prejudice.

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