

Retroactive Accommodations to Excuse Past Misconduct Not Required under the ADA

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Envision a situation where you are about to terminate an employee for violating a work conduct rule. Sensing what is coming, the employee explains to you her disability caused her to violate the rule. Are you required to accommodate under the Americans with Disabilities Act (ADA) and forgo termination? The answer is no.

The Tenth Circuit reiterated the rule that the ADA does not require after-the-fact accommodations in [DeWitt v. Southwestern Bell Telephone Company](#). There, the employer terminated a customer service representative after the representative hung up on two of its customers. The employee suffered from Type I diabetes, was insulin dependent, and needed to monitor her condition throughout the day. The company was aware of this condition and, as an accommodation, permitted the customer service representative to take breaks to eat or drink to control her blood sugar level.

Prior to her termination, the customer service representative had mistakenly left a cancelled service on a customer's account and was therefore placed on a Last Chance Agreement. Under this agreement, any new violation of company policy could constitute grounds for termination. The customer service representative subsequently hung up on two customers and was terminated.

The customer service representative then sued under the ADA arguing she should have been granted a retroactive accommodation in the form of leniency for such misconduct because it was caused by her diabetes. The trial court granted summary judgment to the employer and the Tenth Circuit Court of Appeals affirmed. The appellate court held that an employer has no obligation under the ADA to excuse misconduct retroactively as an accommodation, even if that misconduct resulted from the employee's disability.

This case confirms that the timing of an employee's accommodation request is important, and employers are not obligated to excuse misconduct of an employee whose disability could be offered as an after-the-fact excuse.

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Topics

ADA, Accommodation, Failure To Accomodate, Reasonable Accomodation, Americans With Disabilities Act