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Third Circuit Decision Highlights Importance of Properly Drafted Termination Form

By Maria Tavano

A recent decision from the United States Court of Appeals for the Third Circuit demonstrates the importance of carefully drafting termination forms, as well as the consequences that can occur as a result of including perhaps less than ideal language.

In [*Church v. Sears, Roebuck and Co.*](#), the plaintiff, former employee Barbara Church, began working as a Merchandise Customer Assistant in July 2007. Her responsibilities included organizing the sales floor, folding and replenishing merchandise, dusting, cleaning floors, greeting customers, and pricing items. In August 2008, she submitted a doctor's note stating she had short-term memory loss, mild speech difficulty, balance problems, muscle weakness, and difficulty performing manual tasks as a result of a traumatic brain injury she suffered in a car accident seven years earlier. The note indicated that she could not perform any heavy lifting or work extended or late hours.

In response, the company accommodated Church by excusing her from performing any tasks that involved heavy lifting and scheduling her only to early day shifts, which were limited to four-to-five hours in length. Church's supervisor at the time testified that Church was able to perform the "normal" duties of her position.

In 2010, a new store manager, Daniel Fisher, and new assistant

store manager, Anthony Archie, began working at Church's store. Church alleged that her new supervisors made her feel uncomfortable about her disability and repeatedly asked her to perform duties beyond her restrictions, such as working additional hours. Church alleged that on one occasion Archie said to her, "Sorry we're not all special and can't only work in the mornings." Church also alleged that Archie refused to accommodate her by refusing to provide her with gloves and a dust mask for cleaning.

The assistant store manager denied all claims of discrimination, stating that while he met with Church twice, those meetings were for the purpose of determining what tasks she was able to perform. Specifically, he testified that he was trying to "get the feel of what" each employee "was used to and . . . what they were doing." At the second meeting, Archie gave Church a highlighter and her job description and asked her to highlight the specific items in the job description she could perform. Church refused and instead took the job description home with her.

In October 2010, Archie asked Church for updated medical documentation and a completed medical certification form. A few weeks later, Church submitted a new doctor's note and the completed certification, which provided that Church suffered from a traumatic brain injury that substantially limited her "talking" and ability to perform manual tasks. The certification indicated that Church could not work more than 5 hours per day. The submissions recommended only that Church work a "modified work schedule" of no more than five hours.

After receiving the certification and medical note, Archie, Fisher, and a human resources employee again tried to meet with Church to discuss which particular duties in her job description she could not perform. Church arrived for this meeting with her husband, who, according to Church, was there to help her feel safe. When Church was told her husband could not attend the meeting, she refused to participate and left the store. Archie and Fisher then called Church to discuss her job description over the phone, reading aloud an exhaustive list of her job duties and asking Church to identify which duties she could perform. Church again refused to do so. In response, Fisher told Church that because she was unable to tell her supervisors what duties she can and cannot perform, her employment would be separated. Church then sued, alleging disability discrimination, hostile work environment, and failure to accommodate under the New Jersey Law Against Discrimination.

At his deposition, Church's supervisor testified that Church was terminated because she refused to identify which tasks within her job description she could perform. To that end, he stated, "it was an issue where we didn't want her to hurt herself or the company be at fault for anything, like having her perform something." An internal

company document entitled "Termination Form" described Church's termination as a "Voluntary Separation" for "Health Reasons." When asked about the reason for termination selected on the Termination Form, the supervisor testified the termination was coded that way so Church would be eligible for re-hire with the company.

Although the company prevailed on a motion for summary judgment at the federal district court, the Third Circuit reversed, finding the case should go to a jury. The Third Circuit found that the content of the Termination Form alone was sufficient evidence to permit a jury to infer that discriminatory attitude towards Church's disabilities was more likely than not a motivating factor in the decision to terminate. The appellate court acknowledged that both the store manager and human resources representative testified that the notation "health reasons" was included on the termination form only so Church would be eligible for re-hire, but nonetheless found that a reasonable juror could find that Church's disability was a "substantial factor" in the termination decision. Viewed in light of the language of the termination form, the appellate court also found a reasonable jury may find comments by Church's supervisors, such as telling Church "sorry we're not all special," to be more than mere stray remarks. However, the appellate court did affirm the employer's victory on the failure to accommodate and harassment claims.

The *Church* decision serves as an important lesson to employers to ensure their personnel forms are not only properly drafted, but all internal coding within those forms is consistent and accurate so that in the event those documents end up produced in a discrimination lawsuit, they cannot be misconstrued.

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