

## Legal Alert

July 15, 2014

Michael R. King  
[mking@gblaw.com](mailto:mking@gblaw.com)  
602-256-4405

**QUESTION: HOW DID A \$1.39 BAG OF CHIPS COST WALGREENS \$180,000?**

**ANSWER: WALGREENS FIRED A CASHIER WITH TYPE II DIABETES FOR EATING A BAG OF CHIPS BEFORE PAYING FOR IT.**

### ***What did Walgreens do when the chips were down?***

Josefina Hernandez worked for a South San Francisco Walgreens as a cashier. She has Type II Diabetes. During a hypoglycemic attack Ms. Hernandez ate part of a \$1.39 bag of chips before paying for it. She raked in the chips to stabilize her blood sugar level and avoid fainting. Her doctor testified: "I'd much rather save her life than have her, you know, be in trouble for not paying." (Does anyone else see irony in this situation?)

Walgreens had a policy against employees eating food before paying for it. Ms. Hernandez was required to have another cashier ring-up her purchase and could not find anyone else at the time of her hypoglycemic attack. She left the partially empty bag of chips in plain sight at her workstation and paid the \$1.39 the same day. She had been employed by Walgreens for 18 years with no prior disciplinary record. Walgreens fired her!

### ***Why did Walgreens cash in its chips and take the loss?***

Walgreens knew for at least 13 years that Ms. Hernandez was a diabetic. She worked for the company for 18 years without any problems. She paid for the chips after she recovered from the hypoglycemic attack.

Terminating an employee because of a disability violates the Americans with Disabilities Act. The Americans with Disabilities Act requires employers to provide reasonable accommodations to employees or job applicants with disabilities.

Walgreens did not "engage Ms. Hernandez in any sort of interactive process to see if it could accommodate her disability, and instead terminated her employment." U.S. District Judge William Orrick held that "Walgreens has failed to allege any misconduct that is unrelated to her disability, . . ." *U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION V. WALGREEN CO.*, CASE NO.: CV 11-4470 WHO (U.S. N.D. CAL. 2014).

When a company security employee questioned Ms. Hernandez seeking clarification for her actions, she wrote, "My sugar low, not have time." The security officer claimed he did not understand the response and did not seek clarification. Walgreens did not bother to consider that it had known about the Type II Diabetes for 13 years. It fired Ms. Hernandez for violating the policy of not eating food before paying for it.

***All that and a bag of chips!***

Okay, I know, Ms. Hernandez actually paid for the bag of chips. Nevertheless, Judge Orrick ordered Walgreens to pay her \$180,000. \$135,000 of that amount is for her emotional distress. The additional \$45,000 is for her wages. Walgreens allowed "Ms. Hernandez to resign as of the date of her termination in October 2008." Walgreens agreed "to provide only neutral information in response to any inquiries from prospective employers."

***This isn't just another chip tossing contest!***

The Court told Walgreens to quit "discriminating based on disability, including failure to reasonably accommodate, as prohibited by the Americans with Disabilities Act." Walgreens and its employees cannot retaliate against Ms. Hernandez or anyone who participated in testifying or investigating her claim.

In addition, Walgreens must revise its employment policy to clarify its "obligation to provide reasonable accommodation." The revised policy must make "clear to supervisors that when they are aware of an employee's disability, and observe that an employee is having difficulty performing his/her job duties as a result, supervisors should affirmatively inquire if an accommodation is needed."

For the next three years, Walgreens will provide annual training for all managers, supervisors and human resources personnel about obligations not to discriminate based on disability and obligations to provide reasonable accommodations to employees with disabilities. Walgreens will report to the EEOC about these training programs and provide the training materials to the EEOC in advance. Walgreens also must post a Notice concerning the Consent Decree in all of its stores in the San Francisco Peninsula District for three years.

Compliance with the Americans with Disabilities Act is serious business. Walgreens has paid a lot in lawyers' fees and legal costs. It also lost an experienced and loyal employee.

You should consult with counsel when terminating employees. You should especially seek advice when dealing with employees with disabilities. Your management staff needs to be trained to deal appropriately with employees and job applicants with disabilities. Failure to do so could be costly.

If you need assistance complying with the Americans with Disabilities Act or other employment laws, please call me.

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