

MEMORANDUM OF LAW



To:

From:

Re:

Date:

I. Statement of Assignment

I was requested to write a Memorandum of Law with the aim of establishing whether our client had broken the requirements of Americans with Disability Act of 1990 or not. Furthermore, the question regarding the subsequent amendments violation was to be addressed. Whitney Industries, the defendant, demanded all employees who smoked to be charged an extra \$100 a month in order to cater for their health. In objection, Nicholas Taylor, the plaintiff, made assertions that he had been discriminated as a person with disability, arguing that in the context of Americans with Disability Act, Title III, him being an addict to smoking qualified as disable. The plaintiff indicated that the action by the defendant amounted to creation of unfavorable employment act. On the onset of the disagreement, the plaintiff charged the defendant before the Equal Opportunity Employment Commission, where the accusation was rejected.

II. Question Presented

Can nicotine addiction be recognized as a form of disability as per the requirements of American Disability Act, and does imposing an extra charge

for smokers with intention to offer them a healthy lifestyle constitute against people living with disability?

III. Brief Answer

Yes, drug addiction is considered a disability but only in case the user is undergoing rehabilitation and no longer uses the drug. As such, the defendant exclusively places the new charges on continuing smokers regardless of whether they were addicted or not. That right is granted to him by Title I of the American Disability Act. Therefore, the imposition of an extra charge was by no means in contravention of the Act.

IV. Statement of Facts

In the year 2014, the defendant, Whitney Industries Incorporation, issued a policy that required all smokers to pay an extra charge of U.S. \$ 100. That was to operate as an insurance cover for the workers who engaged in smoking. The policy was intended to assist in controlling the increasing healthcare expenses, as well as promoting a healthy lifestyle among its employees. The charge reflected the costs incurred by the company due to the rising healthcare expenses. However, one of their employees had expressed objections to the charges claiming that it was discriminative.

The worker, Nicholas Taylor, filed the complaint at Equal Opportunity and Employment Commission, and received a declination to admit the charges. Nonetheless, the plaintiff appealed to court complaining of violation of his rights as per the American Disability Act. In his fillings, the he claims to be suffering some form of disability owing to his addiction to smoking, thus with this respect the policy employed by the defendant should be considered

discriminatory. It is necessary to point out that the plaintiff continues to engage with his smoking habit to-date.

V. Applicable statute

None

VI. Discussion

According to the American Disability Act Title III, drug addiction can be regarded as a disability. However, Title I of the same Act provides employers with an opportunity to limit or totally bar the use of drugs at work places. Furthermore, the law forbids consideration of an individual who continues to engage in drug abuse as having a disability. As such, the defendant would require the plaintiff to provide the evidence that they have stopped smoking, as well as the proof they are undergoing a rehabilitation process. Besides, the plaintiff ought to show the history of the time they have suffered under the addiction. It is worth noting that the policy by the defendant focuses on the individuals who continued to smoke whether addicts or not. As per the law, the defendant enjoyed such privileges as not to consider addicts who persisted in smoking as people with disability. Hence, the defendant's actions should not be considered as discriminatory.

In the case *Brown v. Lucky Stores*, Fisher, a circuit judge with United States Court of Appeals, ruled in favor of the defendant, Lucky Stores. The judge argued that for Brown to claim she was wrongfully dismissed for being alcoholic, she ought to have participated in a supervised rehabilitation program. Further, she was required to have stopped alcohol consumption. Likewise, Taylor's application for being discriminated by his employer, Whitney

Industries, should indicate the plaintiff's participation in a rehabilitation process. Moreover, there ought to be the evidence that the plaintiff does not continue to smoke.

In another case, *Zenor v. El Paso Healthcare System, Ltd.*, the judge refused to grant the plaintiff the consideration to be qualified as a disabled. According to the ruling, Zenor was regarded as a disqualified individual due to the fact that he continued to use the drugs at the time. Again, the use of illegal drug likewise the case of Zenor automatically disqualifies one from being regarded as a disabled. As per the ruling, American Disability Act only qualifies the people who have stopped the substance abuse as well as those not engaging in illegal drugs.

An additional, the case *Baert v. Euclid Beverage*, the judge granted a summary judgment. The court had argued that the plaintiff was required to provide the evidence of his condition to the employer for them to be considered as disabled. However, the court observed that the entities covered should not discriminate against people regarded as qualified with a disability regarding the impairment of such individuals.

Conclusion

The plaintiff should provide the evidence prevalence a prima facie that he suffers from mental or physical harm, as per the requirement of Americans with Disability Act. Furthermore, he ought to provide the records of such issue, and his state should be such that he gets the consideration as suffering from the impairment. The defendant challenges the plaintiff only to his ability in stating a prima facie case, and as such, no address to the remaining elements of the case is made. Moreover, he should indicate the ways in which an unfavorable employment action was orchestrated against him.