Hold It! Must You Allow Unlimited Bathroom Breaks?

You're required to offer job accommodations to employees with qualifying disabilities. But if an employee has a medical condition that requires frequent bathroom breaks, does that count as a "disability"? The answer is a clear "yes," especially this year …

Case in Point: Reginald Green was hired as a chauffeur and office assistant for a university president. Green underwent a pre-hiring medical exam in which he disclosed that he took medication for a bowel condition. He explained that the condition caused him to experience urgent needs to use the washroom. Nevertheless, he had no work restrictions.

Before he began the job, Green's supervisor reviewed with him his responsibilities to be a safe driver. The supervisor also allegedly told Green it was best to minimize bathroom stops on long driving trips, stating that one stop was "acceptable" but "zero is preferable."

The trouble occurred when the university president took a business trip from Washington, D.C., to Philadelphia. Prior to leaving, Green asked his supervisor if he could stop during the drive to use the restroom. The request was approved.

However, on the return ride home, the president didn't want Green to make any stops. Green warned the president that he would "have an accident in the car" if he wasn't allowed to stop. The president ignored his plea. Regardless, Green drove to a rest stop and used the facilities. When Green returned to the car, the president mumbled something under his breath and refused to talk to Green the rest of the drive. The next day, Green was fired.

He sued the university for discriminating in violation of the Americans with Disabilities Act (ADA), which requires "reasonable accommodations" for people with qualifying disabilities. The school countered by saying Green was fired for a legitimate business reason (poor performance) and not because of his disability. Plus, it argued that Green wasn't technically disabled because he never missed a day of work due to the medical condition. (*Green v. American Univ*., D.D.C., 8/21/09)

What happened next and what lessons can be learned?

The court told the university to put a lid on its defense. It sent the case to a jury to flush out the facts.

The court said Green *does* qualify as a disabled person because the ADA Amendments Act of 2008 included "waste elimination" as a "major life activity" under the law. (The ADA says a disabled person is one who "has a physical or mental impairment that substantially limits one or more major life activities.")

The court also rejected the theory that Green wasn't disabled because he never missed work due to his ailment. It noted that "missing work is not a prerequisite for establishing the existence of a substantial impairment."

In the past, the EEOC was going after the $25 million cases. Now they're going after everybody for everything.

3 Lessons Learned … Without Going to Court

1. Respect the accommodation—don't mumble under your breath. The court can hear you. It may not hear exactly what you said, but it will hear your attitude against people with disabilities or other protected characteristics.

2. Try, try again. If you fire an employee with a disability who has a good performance record and then you claim they were fired for poor performance … try, try again. But, as in this case, the court won't buy fishy excuses.

3. Get a sundial. If an employee asks for a reasonable accommodation before the sun rises and you fire them before the sun sets, get ready to write a check where the sky is the limit.