

## **EFFORT TO AVOID HIGH COST OF MEDICAL CARE POTENTIAL ADA VIOLATION**

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In *Dewitt v. Proctor Hospital*, Case No. 07-1957 (7<sup>th</sup> Cir. 2008), a nurse alleged that she was terminated because the hospital at which she worked wanted to avoid the high cost of medical care for her husband. The hospital was self-insured, with an annual “stop loss” of \$250,000. The nurse’s husband racked up nearly \$317,000 in expenses in less than three years. The hospital approached the nurse on at least two occasions during a five month period to inquire about these costs. Moreover, the hospital informed managers that it needed “creative” efforts to cut costs. Shortly thereafter, the nurse was fired.

The Seventh Circuit ruled that a jury should determine whether the employee has a claim under the provision of the Americans with Disabilities Act (“ADA”) that prohibits discrimination against employees who are associated with a disabled individual. Among the factors it considered in reaching this decision were: (1) the hospital’s financial concerns, (2) the heavy hit the hospital directly took as a result of the \$250,000 stop loss amount, (3) the expressed need to be “creative” in cutting costs, (4) the hospital’s inquires about the high costs of the nurse’s husband’s medical treatment, (5) the timing of the termination in relation to these factors, and (6) the fact that, at the time of termination, the husband’s condition and the resulting costs to the hospital remained indefinite.

Many employers know that, when analyzing the risks of termination, they should review issues relating to protected classes (race, sex, age, etc.). When analyzing the protected class of disability, it is not enough to review potential discrimination because of (and/or failure to accommodate) the employee’s own disability. The employer also must consider whether there may be a claim of discrimination based on the employee’s association with a disabled person. Termination decisions motivated by a desire to control health care costs can result in liability under the ADA and, depending on the type of employer, ERISA.

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