



SUPREME COURT UPHOLDS EMPLOYER POLICY NOT TO REHIRE FORMER EMPLOYEES TERMINATED FOR WORKPLACE MISCONDUCT

(December 3, 2003)

Summary

Yesterday, the United States Supreme Court held that a neutrally applied company policy not to rehire former employees who were previously terminated for workplace misconduct, such as workplace drug use, is legitimate and does not violate the Americans with Disabilities Act (ADA).

Details

In 1991, Joel Hernandez's appearance and behavior at work suggested that he might be under the influence of drugs or alcohol. Pursuant to company policy, Hernandez took a drug test which came back positive for cocaine. Later, Hernandez admitted that he was under the influence of cocaine and alcohol while at work. Because his behavior violated the company's workplace conduct rules, Hernandez was forced to resign. More than two years later, Hernandez applied to be rehired by the company. His application, however, was rejected because the company had a policy against rehiring employees who were terminated for workplace misconduct.

After his rejection, Hernandez sued the company claiming that it failed to rehire him on the basis of his past record of drug addiction, a protected disability under the ADA. Supporting the company's policy, however, the Supreme Court explained that a neutral, generally applicable no-rehire policy is, by definition, a legitimate and non-discriminatory reason for not rehiring Hernandez under the ADA. As a result, unless Hernandez could somehow prove that the company's no-rehire policy was not the true reason for his rejection, his claim of discrimination fails.

What this means

The Supreme Court's ruling is a welcome and beneficial development for employers. When applied neutrally, a blanket policy not to rehire former employees who were previously terminated for workplace misconduct will not support a claim of intentional disability discrimination.

If you have any questions about this or any other topic, please contact [Joe Connaughton](#) or [Michael Minguet](#) at (619) 237-5200 at [Paul, Plevin, Sullivan & Connaughton](#).

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