
**Federal Court Report**

**Court Skeptical of Employer’s Reasoning for RIF**

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The 5th U.S. Circuit Court of Appeals overturned a trial court's decision in favor of the employer, criticizing the employer's reasoning for terminating the plaintiff's employment as part of a reduction in force (RIF). The appellate court found that the employer's inconsistent rationales discredited the employer's defenses to a claim of disability discrimination.

Apache Industrial Services Inc. initially hired the plaintiff in March 2018, to work on a temporary, six-month basis on a scaffolding project in Beaumont, Texas. When it hired the plaintiff, Apache knew she was diabetic, but the plaintiff's doctor cleared her to perform the company's work.

The plaintiff began work in early April, working for a few weeks before she suffered a diabetic attack at work on April 26, 2018. After the attack, her doctor permitted her to return to work the next day.

On May 2, 2018, she was terminated, along with 11 other employees, as part of a RIF.

In a lawsuit challenging her termination, the plaintiff alleged she was fired in violation of the Americans with Disabilities Act (ADA) because of her diabetes and her diabetic attack. The trial court ruled in favor of Apache, and the plaintiff appealed.

Apache argued that the RIF was necessary due to lack of available work on its jobsite. However, the appellate court emphasized that the proximity of the plaintiff's on-the-job diabetic episode with her termination was sufficient to suggest a potential discriminatory connection. Determining that the plaintiff could establish a preliminary showing of discrimination based on her disability, the court analyzed Apache's justifications for initiating the RIF.

Apache failed to use any standardized or fixed criteria, nor did Apache follow any other kind of meaningful assessment to determine which employees to terminate and which to retain during the RIF, according to the appellate court. The court found Apache's inability to state reliably why certain people were chosen for termination over others significantly discredited Apache's position that the plaintiff's disability was not a factor in her termination decision.

Overall, the court concluded that the proximity of the plaintiff's diabetic attack to her termination, as well as Apache's inconsistent explanations and inability to distinguish any criteria in evaluating which employees would be subject to the RIF, tended to show that Apache's reasoning for terminating the plaintiff was "false or 'unworthy of credence.' " The appellate court sent the decision back to the trial court for further proceedings, including a closer examination of Apache's suggested reasoning for the plaintiff's termination.

*Gosby v. Apache Industrial Services Inc.*, 5th Cir., No. 21-40406 (April 8, 2022).

**Takeaway:** When an employer prepares to layoff or reduce its workforce, the employer should evaluate employees using standard and clear criteria as it determines which employees to retain and which to terminate. Employers should be mindful not to evaluate employees based on any protected classifications under federal, state or local laws, including an ADA-protected disability.

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