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## EMPLOYMENT LAW

# 'Lying Is Lying': Dishonesty Dismantles Discrimination Dispute

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*Special to the Legal*

When an employee's misconduct is related to, or even caused by, her disability, employers are faced with the difficult task of distinguishing between the employee's conduct and her condition. This and other issues were recently addressed in *Weikel v. Pyramid Healthcare*, No. 18-4474, 2019 U.S. Dist. LEXIS 221378 (E.D. Pa. Dec. 27, 2019), where the court granted summary judgment based on an employee's failure to show that her employer's well-documented reasons for her firing were a cover for unlawful discrimination.

### LAST CHANCE AGREEMENT

After working for defendant Pyramid Healthcare Inc. for more than two years, plaintiff Susan Weikel showed up to work under the influence of alcohol one day in February 2014. To make matters worse, she was later found to be keeping alcohol at the office. Rather than terminate Weikel for this violation of the company's policies, Pyramid offered her a last chance agreement. Among other things, the agreement required Weikel to seek treatment for alcoholism, and it warned that any further violation



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of Pyramid's policies would result in termination.

Weikel worked without incident until a relapse in November 2016. On Friday, Nov. 11, she told her immediate supervisor that a stomach virus prevented her from coming in to work that day. The following Monday, Nov. 14, she told her supervisor that she would be out again due to a car accident. The next day, Pyramid learned that Weikel was, in fact, being taken to the hospital following a multiday drinking binge. Following her discharge from the hospital, Weikel told Pyramid that she would be entering an in-patient rehabilitation program.

She also admitted to the company that her Nov. 11 and Nov. 14 absences were caused by her alcohol use, rather than the reasons given to her supervisor.

Once Weikel's lies came to light, Pyramid terminated her for violating its disciplinary review process policy and breaching her last chance agreement. In the wake of her firing, Weikel decided to bring suit against Pyramid, claiming violations of the Americans with Disabilities Act (ADA) and other statutes.

### DISABILITY DISCRIMINATION CLAIM FAILS

In considering Weikel's claim that Pyramid discriminated against her because of her alcoholism—a recognized disability—the court employed the familiar burden-shifting framework established in *McDonnell Douglas v. Green*, 411 U.S. 792 (1973), which requires a plaintiff to demonstrate that she has a disability, is a qualified individual, and has suffered an adverse employment action because of her disability. After the plaintiff makes this showing, the burden then shifts to the employer to articulate some legitimate, nondiscriminatory reason for its action. Once the employer does so, the burden shifts back to the plaintiff to show that the

employer's stated reason was merely a pretext for unlawful discrimination.

Pyramid did not dispute that Weikel's alcoholism is a protected disability, nor did it dispute that she was otherwise qualified for her position. Instead, the company argued that while Weikel's status as an alcoholic is protected, the ADA does not shield her from the current use of alcohol and any related consequences. Citing the U.S. Court of Appeals for the Third Circuit's consistent holdings on this issue, the court agreed that "an employee's status as an alcoholic is not a shield against her conduct, even conduct attributed to alcoholism, that violates the policies of the employer or a last chance agreement." Pyramid also offered (as a nondiscriminatory rationale for Weikel's firing) that her lies to her supervisor about her absences breached both the company's disciplinary policy and the parties' last chance agreement.

In an effort to show that Pyramid's explanation was pretextual, Weikel argued that her termination letter clearly stated that she was let go because of her relapse and that she did not, in fact, lie to her supervisor. Neither argument carried the day. First, Pyramid's termination letter stated that Weikel had been "previously rehabilitated by the company for a similar alcohol abuse problem," and that Pyramid's investigation had "determined that, based on Weikel's own admission of relapsing, she had violated the company's disciplinary review process policy." As it parsed this language, the court emphasized the letter's rationale that Weikel had violated company policy based on her own admission of relapsing, not because she relapsed. In other words, once Weikel admitted her relapse, Pyramid knew that her prior statements were false and in violation of its disciplinary policy.

As for the statements themselves, the court highlighted Weikel's own deposition testimony that her proffered explanations for her absences "would have been not accurate." The court also rejected as "meritless" Weikel's argument that her statements were merely "bizarre" or "not coherent," rather than misleading. In the court's words, "lying is lying, regardless of whether the person lying is actually good at lying."

For these reasons, and finding no genuine dispute that Weikel was terminated "for her conduct in violation of company policy, not because of

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her disability," the court granted summary judgment to Pyramid on her disability discrimination claim.

## **FAILURE-TO-ACCOMMODATE CLAIM ALSO FAILS**

Next, Weikel alleged that Pyramid failed to provide available, reasonable accommodations for her disability. In rejecting this claim, the court found that Pyramid's decision to offer Weikel a last-chance agreement after she showed up to work intoxicated constituted a good-faith effort to accommodate her, as a last-chance agreement is a recognized form of accommodation. The court further reasoned that any accommodation that would have permitted Weikel to lie to her supervisor "would impose

a wholly impractical obligation" on Pyramid and was not required in order to fulfill its duty to accommodate. For these reasons, the court also granted summary judgment as to Weikel's failure-to-accommodate claim.

## **BEST PRACTICES FOR COMPASSIONATE COMPLIANCE**

This case again highlights the myriad advantages of last chance agreements, including fairness to the employee, setting clear expectations for all parties, and building a favorable record for the employer (as the agreement itself is a recognized accommodation). It also serves as a timely reminder of the critical distinction between an employee's conduct and her condition: while conduct-based employment actions are permitted, disability-based actions may result in legal liability. Before carrying out any adverse employment action—and terminations in particular—managers should document the legitimate, nondiscriminatory reasons for the action. In this case, it was Pyramid's effective documentation that gave the court sufficient basis to rule in its favor on all of plaintiff's claims.

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