Employment Claims

Based on Association with Another Person

BY MICHAEL R. LIED

One can imagine the unseen narrator on "Desperate Housewives," Mary Alice Young, saying something like this: "Relationships: From birth we begin to form relationships with others. Our deepest relationships are usually with close family members. Those relationships can bring incredible joy, but sometimes also carry legal entanglements."

Cases involving relationships are not exactly new. Earlier cases often alleged discrimination based on interracial dating or marriage. In several recent cases, courts have explored the boundaries of situations in which family or other relationships resulted in consequences that led to litigation.

DeWitt v. Proctor Hospital

The first two recent cases are unusual in that they involve an employee's family member who had significant medical costs. Employee Phyllis DeWitt and her husband, Anthony, were covered under Proctor Hospital's health insurance plan. Proctor Hospital was partially self-insured—up to $250,000 per year. Anthony suffered from prostate cancer and received expensive medical care. In 2003, the DeWitts' medical claims for Anthony were $71,684. In 2004, the figure jumped to $177,826. In the first eight months of 2005, the expenses were $67,282.

In September 2004, DeWitt's supervisor, Davis, asked what treatment Anthony was receiving, and DeWitt responded that he was undergoing chemotherapy and radiation treatments. Davis asked DeWitt if she had considered hospice care for her husband and also explained that a committee was reviewing Anthony's medical expenses, which she described as unusually high. In February 2005, Davis again asked DeWitt about Anthony's treatment. In May 2005, Davis informed the employees that Proctor was facing financial troubles, which, according to Davis, required a "creative" effort to cut costs.

Proctor fired DeWitt on Aug. 3, 2005, for alleged insubordination. DeWitt sued for age and gender discrimination and alleged that Proctor had violated the Americans with Disabilities Act (ADA). The district court granted summary judgment for Proctor Hospital; DeWitt appealed.

The dismissal of DeWitt's age and gender discrimination claims was affirmed, but not the ADA claim. Under the ADA, an employer is prohibited from discriminating against an employee as a result of the known disability of an individual with whom the employee is known to have a relationship or association. 42 U.S.C. § 12112(b)(4). DeWitt alleged that Proctor had fired her to avoid having to continue to pay for Anthony's substantial medical costs under Proctor's self-insured health insurance plan.

In an earlier case, *Larimer v. International Business Machines Corp.*, 370 F.3d 698, 700 (7th Cir. 2004), the court of appeals had outlined three categories into which "association discrimination" plaintiffs generally fall: (1) expense, (2) disability by association, and (3) distraction. In the "expense" scenario, the court noted that an employee who has been fired because her spouse has a disability that is costly to the employer falls within the intended scope of the "associational discrimination" section of the ADA.

The court said DeWitt had provided fairly persuasive circumstantial evidence that her case was one that relied on direct evidence. Proctor, which faced financial trouble, was concerned about cutting costs. Because Proctor's unusually high stop-loss insurance coverage was inapplicable until claims exceeded $250,000, Proctor felt the bite of the DeWitts' expenses. According to the appellate court, Proctor was not discreet about its concerns: At a May 2005 meeting, Davis informed Proctor's clinical managers that the hospital would have to be creative in cutting costs.

In addition, Proctor was specifically interested in the high cost of Anthony's medical treatment. The timing of DeWitt's termination also suggested that Anthony's continued cancer treatment was an important factor in Proctor's decision. According to the court of appeals, a reasonable juror could conclude that Proctor, which faced a financial struggle of indeterminate length, was concerned about Anthony's future medical costs. Because DeWitt established that direct evidence of "association discrimination" may have motivated Proctor in its decision to fire her, summary judgment for Proctor was inappropriate.

DeWitt also asserted that the district court had erred in refusing to allow her to amend her complaint to add a claim of retaliation under ERISA. Under § 510 of ERISA, an employer may not discharge a participant or beneficiary for exercising any right to which he or she is entitled under the provisions of an employee benefit plan. 29 U.S.C. § 1140. This provision seeks to discourage employers from discharging or harassing their employees in an attempt to prevent them from using their pension or medical benefits. Based on many of the same facts, a reasonable jury could have concluded that Proctor had retaliated against DeWitt, thereby violating ERISA's provisions. The court of appeals reversed the district court on this point as well. *DeWitt v. Proctor Hosp.*, 517 F.3d 944 (7th Cir. 2008).

Trujillo v. PacifiCorp

In another case, William and Debra Trujillo were employed by PacifiCorp and participated in their employer's health insurance plan. The Trujillos' son, Charlie, suffered from a brain tumor that later metastasized to his spine. Charlie suffered a relapse on May 30, 2003, and was deemed to be in the final stages of cancer. Charlie's medical care providers recommended aggressive experimental treatments to reverse the progression of the disease. Within six weeks, Charlie's medical bills exceeded $62,000.

PacifiCorp employees, at both the local and corporate level, were aware of Charlie's condition, and there was evidence that the company was focused on health care costs.

Because PacifiCorp was a self-insured company, insurance claims for Charlie's health care costs were paid directly by PacifiCorp. One company executive commented that 90 percent of all health care costs were incurred as a result of claims submitted by only 10 percent of the employees. Charlie was one of only two people with a terminal illness during the relevant time period.

Health care costs for each employee were factored into the plant's budget as a line item for labor costs. The labor union and the company's management met annually to review the past year's health care claims and the firm's experience with them.

On June 10, 2003, just 11 days after Charlie's relapse, PacifiCorp began an investigation into alleged "time theft" by the Trujillos. The investigation resulted in the termination of the couple. The Trujillos sued, claiming that they were terminated because of the health care costs associated with their son's illness.

As pointed out in the *DeWitt* case, the ADA provides that covered employers may not discriminate against a qualified individual who has a disability. Disability discrimination includes denying jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or an association.

The district court held that the Trujillos had failed to raise a reasonable inference that Charlie's disability was a determining factor in PacifiCorp's decision to terminate them. After examining the earlier *Larimer* case heard by the Seventh Circuit, the court of appeals disagreed with the district court.

In *Larimer*, the plaintiff had claimed he was terminated because his twin daughters were born prematurely and thus had the potential for his employer to incur substantial costs in medical benefits. The court identified several types of ADA "association discrimination" cases:

> The categories can be illustrated as follows: an employee is fired (or suffers some other adverse personnel action) because (1) ("expense") his spouse has a disability that is costly to the employer because the spouse is covered by the company's health plan; (2a) ("disability by association") the employee's homosexual companion is infected with HIV and the employer fears that the employee may also have become infected, through sexual contact with the companion; (2b) (another example of disability by association) one of the employee's blood relatives has a disabling ailment that has a genetic component and the employee is likely to develop the disability as well (maybe the relative is an identical twin); (3) ("distraction") the employee is somewhat inattentive at work because his spouse or child has a disability that requires his attention, yet not so inattentive that to perform to his employer's satisfaction he would need an accommodation, perhaps by being allowed to work shorter hours.

Larimer, 370 F.3d at 700. The Trujillos' case was categorized as an "expense" type case. The court of appeals noted that the Trujillos offered both evidence of general concerns about the rising cost of health care and specific facts that Charlie's claims were considered high-dollar costs, that there was only one other terminal illness during the relevant time period, and that PacifiCorp was keeping tabs on those claims.

The Trujillos also presented evidence that insurance costs factored into PacificCorp's budget as a line item for labor costs of each employee. The Trujillos offered an e-mail regarding Mrs. Trujillo's personal leave related to Charlie's illness in which the company stated that it monitors both health and welfare benefits in conjunction with an employee's personal leave. From the evidence the Trujillos presented—concerns about rising health care costs, numerous efforts to cut those costs, and corporate monitoring of general health care costs as well as Charlie's specific claims—a jury could reasonably infer that PacifiCorp had terminated the Trujillos because they were expensive employees.

According to the court, the Trujillos' strongest evidence of the employer's discriminatory motive was found in the temporal proximity between the time of Charlie's relapse and the investigation of the alleged time theft and their termination. Thus, the Trujillos established a prima facie case of "association discrimination" in the "expense" category.

However, PacifiCorp asserted that the Trujillos intentionally falsified time records in order to earn compensation for time when they had not worked. In response, the Trujillos offered evidence regarding the differential treatment of similarly situated employees. For example, approximately four weeks prior to Mr. Trujillo's termination, another long-term employee, Linda Todd, was under investigation by the same management employees for two separate incidents in which she had made threats of violence against other employees. During the investigation, Todd maintained that stress had caused her behavior. She was initially put on short-term disability leave until her situation improved, although she was ultimately terminated for working while on that leave, among other reasons. Todd's treatment differed from the way both Trujillos were treated: Rather than progressively disciplining the Trujillos, taking into consideration their past performance and their current situation, PacifiCorp terminated them immediately.

The Trujillos also presented evidence of a situation in which an employee had not been terminated after serious misconduct: viewing pornography twice on company computers. Finally, the Trujillos offered evidence that many other employees had been punished for violations in filling out their time sheets by not getting paid for days they took off, rather than by termination. This disparate treatment of similarly situated employees contributed to a reasonable inference of pretext, defeating PacifiCorp's claimed legitimate business reason for terminating the Trujillos.

The Trujillos also argued that PacifiCorp terminated them in violation of ERISA. The Trujillos provided sufficient evidence that the decision to terminate them was based on discriminatory intent to violate the ADA. That evidence also supported an inference that their discharge was mo-

tivated by an intent to interfere with their ERISA benefits. Summary judgment for Pacificorp was reversed. *Trujillo v. PacifiCorp*, 524 F.3d 1149 (10th Cir. 2008).

Holcomb v. Iona College

Though recent, another case that is relevant to the issue of discrimination because of association is a bit more typical in that it involves an interracial relationship. *Holcomb v. Iona College*, 521 F.3d 130 (2d Cir. 2008) marked the first time the Second Circuit was called upon to decide whether discrimination against a white man, who was married to an African-American woman, violated Title VII of the Civil Rights Act of 1964. Holcomb was an assistant coach of the Iona College "Gaels" men's basketball team, which had successful seasons in 1998, 2000, and 2001. In June 2000, Holcomb married Gauthier, an African-American woman.

About that time, the basketball program began to suffer losses, and the college eventually became concerned about the team's on-court results and its off-court activities. Reports to college officials did not include specific criticisms of Holcomb but did criticize the coaching staff as a whole. The reports said that the staff could not get along, that it was "poor" politically, and that it did not work as it needed to in order to make the program successful.

The college president and three vice presidents decided to terminate Holcomb and another assistant coach, Chiles. Holcomb was asked to resign, but he refused to do so; he was later terminated by a letter dated May 14, 2004. In his lawsuit, Holcomb claimed that the college's decision to terminate his employment was motivated by his marriage to an African-American woman. In response, the college said that Holcomb had been removed from the athletic department's staff as part of a necessary overhaul of a program that had a team that was performing poorly and denied that the decision was based on race. The district court entered summary judgment for Iona College, and Holcomb appealed.

To establish a prima facie case, Holcomb had to show four elements of discrimination: (1) that he belonged to a protected class, (2) that he was qualified for the position he held, (3) that he had suffered an adverse employment action, and (4) that the adverse employment action had occurred under circumstances giving rise to an inference of discriminatory intent. The second and third elements of Holcomb's prima facie case were not in question.

Holcomb alleged that he was discriminated against as a result of his marriage to an African-American woman. The Second Circuit Court of Appeals had never ruled on the question of whether Title VII applies in such circumstances. The court concluded that when an employee is subjected to adverse action because an employer disapproves of an interracial association, the employee suffers discrimination because of the employee's *own* race.

In this instance, the college decided to fire Holcomb, a white man married to an African-American woman, and Chiles, an African-American man, while retaining O'Driscoll, a white man, who was not in an interracial relationship. The director of the athletics program, Brennan, and the vice president of the college, Petriccione, both knew that Holcomb was married to an African-American woman, and the facts suggested that both Brennan and Petriccione played a role in the decision to terminate Holcomb and Chiles.

The appellate court agreed that there was evidence that Iona College had good reason to make *some* changes to its men's basketball program. The head coach, Liguori, testified that he chose to retain one of the three coaches for the sake of continuity, and that he selected O'Driscoll because it had been reported that O'Driscoll worked well with other departments.

According to the court, Holcomb, who claimed that the college had acted with mixed motives, was not required to prove that the employer's stated reason was a pretext. Instead, he could show that the impermissible factor was a motivating factor without necessarily proving that the employer's explanation was not some part of the employer's motivation.

The appellate court said that a jury could find that Brennan and/or Petriccione wanted to remove Holcomb because his wife was black and that Brennan and/or Petriccione played a decisive role in the decision to terminate the assistant coach. A reasonable jury could favor Holcomb's version of events on each of these two steps and thereby reach the conclusion that race had played an illegitimate role in the college's decision. Therefore, the court of appeals reversed the lower court's summary judgment for the college. *Holcomb v. Iona College*, 521 F.3d 130 (2d Cir. 2008).

Thompson v. North American Stainless LP

The next case related to this topic involved a claim of retaliation and clearly expands the law by allowing a plaintiff to claim retaliation based on a family member's charge of discrimination. Thompson worked as a metallurgical engineer for North American Stainless LP, and was terminated. At the time of Thompson's termination, he and Regalado were engaged to be married. Their relationship was common knowledge at North American Stainless. Regalado filed a charge with the Equal Employment Opportunity Commission (EEOC), alleging that her supervisors had discriminated against her based on her gender. A few weeks later, North American Stainless terminated Thompson's employment. Thompson alleged that he had been fired in retaliation for Regalado's EEOC charge. The complaint was dismissed on a motion for summary judgment.

Thompson appealed, contending that the anti-retaliation provision of Title VII prohibits an employer from terminating an employee based on the protected activity of his fiancée, who works for the same employer. Section 704(a) of Title VII of the Civil Rights Act of 1964 prohibits retaliation by employers for two types of activity: "opposition" and "participation":

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees … because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under his subchapter.

42 U.S.C. § 2000e-3. The court of appeals found the following question to be the issue in the case: Does Title VII prohibit employers from taking retaliatory action against employees not directly involved in protected activity but who are so closely related to or associated with those who are directly involved that it is clear that the protected activity motivated the employer's action?

According to the court, a literal reading of § 704(a) suggests a prohibition on retaliation by the employer only when this action is directed at the individual who instituted the protected activity. Such a reading, however, defeats the purpose of Title VII. According to the court, there was no doubt that an employer's retaliation against a family member after an employee files an EEOC charge would, under *Burlington Northern and Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006), dissuade a reasonable worker from such an action.

The district court believed that it was obliged to grant summary judgment, even though the court acknowledged that its ruling would undermine the purposes of Title VII. The district court recognized that retaliating against an employee's spouse or close associate would deter the employee from engaging in protected activity just as much as if the employee himself or herself had been subject to retaliatory action.

As the court of appeals noted, other courts have made a similar observation. *See*, for example, *Fogleman v. Mercy Hosp. Inc.*, 283 F.3d 561, 569 (3d Cir. 2002) ("Allowing employers to retaliate via friends and family, therefore, would appear to be in significant tension with the overall purpose of the anti-retaliation provisions, which are intended to promote the reporting, investigation, and correction of discriminatory conduct in the workplace."); *Holt v. JTM Indus. Inc.*, 89 F.3d 1224, 1227 (5th Cir. 1996) ("We recognize that there is a possible risk that an employer will discriminate against a complaining employee's relative or friend in retaliation for the complaining employee's actions."). In *Fogleman*, the court even noted, "To retaliate against a man by hurting a member of his family is an ancient method of revenge, and is not unknown in the field of labor relations" (quoting *NLRB v. Advertisers Mfg. Co.*, 823 F.2d 1086, 1088 (7th Cir. 1987)).

The court of appeals concluded that permitting employers (not the individual conducting the protected activity) to retaliate against an employee would still deter persons from exercising their protected rights under Title VII. The court of appeals reversed the dismissal of the complaint. *Thompson v. North Am. Stainless LP*, 520 F.3d 644 (6th Cir. 2008).

Ellis v. United Parcel Service Inc.

To avoid claims of harassment and discrimination, some employers prohibit dating or marriage among employees. The next case to be discussed involved a policy prohibiting relationships between managers and hourly employees. United Parcel Service's (UPS) nonfraternization policy forbids a manager from having a romantic relationship with any hourly employee—even an employee the manager does not supervise. Ellis, an African-American man, sued UPS, claiming that the company had fired him because of his race and because he was married to a white woman, in violation of Title VII of the Civil Rights Act of 1964. The district court granted summary judgment for UPS, and Ellis appealed.

Ellis, a UPS manager, began dating an hourly employee, Greathouse, and for more than three years he kept quiet about the relationship, and Greathouse told only one close friend. Other employees eventually learned that Ellis and Greathouse had a relationship. The manager of employee relations, Baker, told Ellis' direct supervisor, Wade, who was an African-American woman, that "there were plenty of good sisters out there," which Wade understood to mean that Baker, also African-American, thought Ellis should be dating an African-American woman. At his deposition, Ellis testified that Baker had called him a "sellout" because he was dating Greathouse.

In February 2004, Ellis admitted to Wade that he was dating Greathouse. Wade told Ellis that either he or Greathouse would have to quit or Ellis would be fired. Wade reported the relationship to her black supervisor, Craft, who then met with Wade and Ellis to discuss their relationship. Craft ordered Ellis to meet with Walker, the human resources manager for the Indiana district. Walker, also black, questioned Ellis about his relationship with Greathouse. Walker explained that Ellis' relationship with Greathouse violated company policy and told Ellis that he had to "rectify the situation."

Ellis did not end the relationship, however; in fact, Ellis and Greathouse became engaged. They were married a little more than a year later, in April 2005. Ellis believed that their marriage brought him into compliance with the company's nonfraternization policy.

Three months after their wedding, Walker saw Ellis at a concert with Greathouse. Walker contacted Severson, a district manager, and told him that Ellis might be in violation of the nonfraternization policy. Severson told Walker to investigate the matter and to review his findings with Lewis, the North Central region's human resources manager. Walker determined that Ellis was in violation of the nonfraternization policy and that the situation had to be resolved. He met with Ellis and found out that Ellis and Greathouse had been married. He asked Ellis to resign. When Ellis refused to do so, he was fired. UPS said it fired Ellis because he had violated the nonfraternization policy and because he had been dishonest. The district court ruled against Ellis, and he appealed.

The court of appeals said that it had not yet decided whether an employer violates Title VII by discriminating against an employee because the employee is involved in a relationship with a person of another race. However, the court declined to address the issue, because it concluded that Ellis had not put forward enough evidence to survive summary judgment.

To make a prima facie case, Ellis had to come forward with evidence that a similarly situated employee who was not involved in an interracial relationship had been treated more favorably than Ellis had been. Ellis identified approximately 20 couples who, according to Ellis, had been

involved in intraracial romantic relationships between a manager and an hourly employee. To be similarly situated, a manager had to have been treated more favorably by the same decision maker who had fired Ellis. The court found that most of the people to whom Ellis' purported to compare himself were not similarly situated, because they were not subject to the same decision maker as Ellis had been when they violated the policy. In this case, Walker alone had made the ultimate decision to fire Ellis. Even though Walker had consulted with Lewis and in-house counsel to discuss UPS's potential legal exposure, this action simply showed that Walker had used the resources at his disposal to make an informed decision.

The undisputed evidence showed that Walker had not been the decision maker for most of the other managers whom Ellis identified. For some of his other comparisons, Ellis failed to offer any admissible evidence that these managers had been involved in a romantic relationship with UPS employees at all. Instead, Ellis had relied on his coworkers' conjecture and speculation that these relationships had occurred.

Ellis offered evidence that a romantic relationship occurred among four couples with whom Walker had been involved. For one of these couples, however, Ellis offered no evidence that Walker had known about the manager's relationship. As to the second couple, Walker learned that the manager had violated company policy in 2005, but Walker had left UPS soon after learning about the relationship and before he could take any action. Regarding the two remaining couples, there was no evidence that Walker had treated the managers who were violating the nonfraternization policy better than he had treated Ellis. Thus, Ellis' failure to establish that any other similarly situated manager in an interracial relationship had been treated more favorably than he had been doomed his discrimination claim.

It is interesting to note that the court stated that its decision should not be construed as an endorsement of the company's nonfraternization policy. "Although UPS, for the reasons stated, comes out on top in this case, love and marriage are the losers. Something just doesn't seem quite right about that." *Ellis v. United Parcel Serv. Inc.*, 523 F.3d 823 (7th Cir. 2008).

Equal Employment Opportunity Commission v. Qwest Corporation

Finally, one recent case related to discrimination because of association involved only a friendship—not a family relationship. The EEOC sued Qwest Corporation, alleging that Qwest had subjected Parra and Rodriguez to discriminatory discipline and termination based on their national origin (Mexican), and that the company had subjected Hebert to discriminatory discipline and termination based on his association with Parra and Rodriguez in violation of Title VII. Qwest argued that the terminations resulted from a customer's complaint that Hebert had spent time at home during workhours and from a subsequent investigation that revealed that Parra and Rodriguez had visited Hebert at home during company time.

Hebert, Rodriguez, and Parra were network technicians, whose jobs consisted of installing and maintaining the network over which Qwest provides telephone service. They drove company vehicles to various locations to conduct such work. An investigation showed that Rodriguez and Parra had visited Hebert's house during worktime and that all three had been engaged in long-standing and widespread violations of Qwest's code of conduct by falsifying company records to indicate that they had been working when they were actually spending excessive amounts of time at Hebert's house or doing unauthorized personal business during workhours.

As to Hebert's claim, the court stated that "this is an association by friendship case." However, the law requires more than mere friendship. The court quoted from *Robinett v. First National Bank of Wichita*, 1989 WL 21158, *2 (D. Kan. 1989):

> Many courts have recognized a cause of action against an employer for discrimination due to one's association with minorities under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981. *Reiter v. Central Consolidated School Dist.*, 39 F.E.P. Cas. 833 (D. Colo. 1985) (Title VII) and *Winston v. Lear-Siegler, Inc.*, 558 F.2d 1266, 1270 (6th Cir. 1977) (Section 1981). To maintain a claim of discrimination or harassment based on her association with an African-American person, plaintiff must show the existence of an association. The law requires something more than mere work-related friendship. There must be a significant connection between the plaintiff and the non-white person. …
>
> In the present case, plaintiff fails to provide sufficient evidence to establish an association with Ms. Moore to maintain actions under Title VII and section 1982 based on association. The association between plaintiff and Ms. Moore was that of co-workers who had a good friendship at work. Plaintiff, as head teller, worked [sic] with Moore, a teller, about her work-related problems. The court accepts as true plaintiff's allegations that she was more supportive and provided more assistance to Ms. Moore than any other white employee at the Bank's west branch. Although plaintiff was very supportive of her black co-worker, this is insufficient to establish the type of relationship between whites and non-whites necessary for a white person to maintain a cause of action of discrimination based on association. Plaintiff provides no evidence that she actively attempted to vindicate Ms. Moore's rights or protested against any discrimination against Ms. Moore. (Emphasis omitted.)

In the case against Qwest, Hebert had socialized with Parra and had asked Parra to check on his ailing wife. Hebert also wrote a statement in support of a discrimination claim brought by Parra and other Hispanic technicians, but Hebert did not send the statement to anyone at Qwest. Moreover, Hebert's statement appeared to be more of a complaint about management style of his supervisor, Seu-

bert, rather than about issues of race. The statement also related that Hebert had been "friends with Parra for a while and Chris [Seubert] would tell me that 'if I wanted to stay out of trouble, that I should stay away from the Rodriguez clan.'" In addition, there was no evidence that the decision maker in the case, Callister, was aware of even the friendship between Hebert, Parra, and Rodriguez.

The court found that the alleged relationship between Hebert and Parra did not rise to a level sufficient to invoke a claim of associational discrimination based on Parra's race. Accordingly, the court granted summary judgment as to Hebert's claim, because he had failed to show that he belonged to a protected class. *EEOC v. Qwest Corp.*, 103 FEP Cases 887 (D. Ore. 2008).

Conclusion

As pointed out at the outset, relationships can have consequences that may end up in a courtroom. Cases like *DeWitt*, *Trujillo*, *Thompson*, and *Holcomb* are certainly raising risks for employers. Employers, judges, and juries may wonder how close a relationship or association must be in order to have legal consequences. As a result of decisions like *Thompson*, a plaintiff may now be able to maintain a lawsuit alleging retaliation without actually having done anything that advances the original discrimination charge. Employers must be cautious to avoid claims of associational disability discrimination and retaliation. In making hiring decisions, employers must be sensitive to applicants who have some association with a person in a protected category. As always, employers must focus on legitimate business considerations; in situations involving discharging or disciplining an employee, the employer must be particularly careful to document the legitimate reasons for taking the employment action. **TFL**

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