

PUBLICATION

Making a Reasonable Accommodation: Walgreens and the \$1.37 Question

Authors: Sarah Katherine Casey

April 17, 2014

A California federal court denied Walgreen Co.'s motion for summary judgment on April 11, 2014, in a disability discrimination case brought by the Equal Employment Opportunity Commission (*EEOC v. Walgreen Co.*, 2014 U.S. Dist. LEXIS 52061). The case revolves around a \$1.37 bag of chips. Josephina Hernandez, an 18-year veteran employee and a diabetic, claims that on September 17, 2008, she opened a bag of chips without paying for them beforehand because she was suffering from a hypoglycemic attack. She attempted to pay for the chips when she recovered, but there was no cashier at the register. Hernandez left the chips under the counter and returned to work. A supervisor found the chips, questioned Hernandez, and reported the incident to the manager. Walgreens fired Hernandez three weeks later, and she filed a complaint with the EEOC, which eventually brought suit after seeking a voluntary settlement.

Walgreens argues that it rightfully fired Hernandez for violating its "anti-grazing" policy, which attempts to address the estimated \$350 million in employee theft costs that Walgreens faces every year. In filing its summary judgment motion, Walgreens cited the EEOC guidance that states that employers never have to "tolerate violence, threats of violence, stealing, or destruction of property." The court found that the context of Hernandez's "theft" is significant and that it will be a question for the jury whether or not "it was a business necessity to treat Hernandez the same as other employees who had been fired under the anti-grazing policy when Hernandez claims taking the chips was necessitated by her medical condition." The court also indicated that Walgreens had failed to establish that Hernandez had, in fact, engaged in "stealing." The issue, as posed by the court in this case, is an intriguing one: "whether an employer under the ADA is required to make a reasonable accommodation with respect to an employee whose disability caused that employee to violate a company's workplace rule."