

Don't let managers hire or fire based on family health costs

Issue: Can you terminate, or refuse to hire, people based on their impact to your health plan?

Risk: Employees have two paths to sue you for such cost-trimming employment actions.

Action: Make sure supervisors know not to act against employees due to their real or expected health costs.

With health insurance costs soaring, employers may be tempted to base hiring or firing decisions on whether a person is a drain on the organization's health costs. Our advice: Don't even think about it; make sure supervisors know it's illegal.

The Employee Retirement Income Security Act (ERISA) says it's illegal to trim benefit costs by firing the most-costly employee. But a lesser-known law, an obscure provision of the ADA, gives employees another avenue to sue you.

The ADA's "association" provision says you can't discriminate against employees or applicants in jobs or benefits because they have a relationship with someone who has a disability. (Say, a company refuses to hire an applicant because her husband has cancer.)

While these types of ADA-association claims are rare, you can count on more of them making their way to court, many paired with ERISA claims. One reason: Plaintiffs' attorneys have been largely unaware of this claim until now.

Recent case: A software company fired salesman Thomas Larimer shortly after the premature birth of his twin daughters, whose serious problems cost the company health plan nearly \$200,000. Larimer sued, alleging violations of the ADA and ERISA, claiming the company based the firing on current and anticipated health care expenses for his disabled children.

The company won the lawsuit. Reason: While the court said that it's possible to prevail on such claims, this company proved that Larimer's supervisors didn't know about the company's health care benefits costs. (Larimer v. IBM Corp., No. 03-2256, 7th Cir., 2004)

Final note: While lawsuits based on the ADA's association provision are typically tied to a spouse, child or other family member, the law's language doesn't limit protections to family ties alone.