

Don't fire employee because of family's high health costs

With health insurance costs soaring, employers may be tempted to make hiring/firing decisions based on whether a person is a drain on the organization's health costs. Our advice: Don't even think about it; and make sure your 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, a provision of the Americans with Disabilities Act (ADA), gives workers 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 rarely litigated, you can count on more of them making their way to court, many paired with ERISA claims, as well. 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 firing was based 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 was able to prove that Larimer's supervisors didn't know anything about the company's health care benefits costs. Plus, Larimer couldn't prove that the company's stated reason for the firing, poor job performance, was wrong. (Larimer v. IBM Corp., No. 03-2256, 7th Cir., 2004)

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

What counts as ADA 'association' bias?

The Americans with Disabilities Act (ADA) "association" provision makes it illegal for companies to discriminate against employees or applicants because of their relationship to a person with a disability. To successfully bring such a claim into court, people must prove four things:

1. They were qualified for the job at the time of the adverse employment action (firing, demotion, refusal to hire).
2. The organization took an adverse employment action.
3. The organization knew that the person had a relative or associate with a disability.
4. The adverse employment action occurred under circumstances that raise a "reasonable inference" that the

disability became the determining factor in the employer's decision.