

Employee committed firing offense? Terminate ASAP--or else prepare for court

If you don't terminate an employee for an obvious firing offense but later use that reason to justify a discharge, you'd better have a good explanation for the delay. Otherwise, a jury may see the move as a pretext for some form of discrimination.

Recent case: Jermaine worked for a catering service. When he applied, he checked a box on the application stating he had never been convicted of a crime—even though he said his previous experience included working in the kitchen at a state prison.

When he developed a hernia, he took time off for surgery and recovery. He returned to work, but felt he wasn't 100% better. Eventually, he asked for reasonable accommodations. Shortly after, he was fired for ostensibly misstating his criminal past on his original job application and setting off a fire alarm in the catering kitchen.

Jermaine sued, alleging disability discrimination. He argued that his boss had known about the application problem for a long time, but assured him that it wouldn't interfere with his employment. Indeed, he earned promotions after confessing the omission. Plus, it was months between the fire alarm incident and his discharge.

The court said he could use the fact that he wasn't fired right away for the application omission or the fire alarm incident to challenge whether those were real discharge reasons or just a cover up for disability discrimination. A jury will decide. (*Butler v. Betty the Caterer*, No. 12-0492, ED PA, 2014)