

You can set 'no rehire' policy for workers fired for misconduct

The Supreme Court last month handed employers more power to set and enforce policies that deny rehiring to employees fired for misconduct. The court said such "no-rehire" policies are valid reasons for turning away former drug users who violated company policy.

The case involved a technician who tested positive for cocaine in a random drug test and was promptly shown the door. He reapplied two years later, saying he was clean. The company refused to rehire him, citing its policy of not reinstating employees who violate company rules. The 9th Circuit Court of Appeals sided with the worker, saying the no-rehire policy violated the ADA because it screened out people addicted but rehabilitated.

But the Supreme Court rejected that interpretation, saying that the company's no-rehire policy is "a quintessential legitimate nondiscriminatory reason for refusing to rehire an employee who was terminated for violating workplace conduct rules." (Raytheon Co. v. Hernandez, No. 02-749)

The downside: The decision fell short of answering the question many hoped it would tackle: To what extent does the law require employers to bend neutral rules to accommodate employees with disabilities?

For now, make sure your policy punishes misconduct, not a disability. And ensure that it's a neutral, uniform policy that is applied consistently. Example: You can't decide to rehire some former workers who broke workplace rules, but exclude all former drug users. That would be discriminatory.