

Watch out for the hidden peril of constantly seeking new applicants

Some employers like to keep résumés and applications on hand just in case they need to fill a position on short notice. But running frequent ads to generate up-to-date résumés can backfire if you end up terminating someone, even for good cause. He might try to argue that your ad proves you were planning to fire him even before the supposed triggering event occurred.

Recent case: Bryan worked as a truck driver and supervisor. According to his performance reviews, he was a good employee.

Then Bryan had a heart attack, and his condition left him with medical problems that affected his respiration and circulation. He sometimes needed help lifting items, pushing and pulling.

Eventually, Bryan needed surgery to have a defibrillator implanted in his chest. He took FMLA leave.

On his first day back, he was fired, allegedly for giving his manager false information about an accident that occurred earlier that day.

Bryan sued, alleging disability discrimination and retaliation for taking FMLA leave. He pointed out to the court that the company had advertised for applicants for his job during his medical leave. He argued that was proof the company was planning to terminate him. He said the alleged false information charge was just an excuse to cover up the company's real intent. The court said that was enough evidence to warrant a jury trial. (*Witbeck v. Equipment Transport*, MD PA, 2017)