

The Virgin Islands Consortium

Employers Stay Close To This Stop, Honk, Go, Mental Illness And Gridlock Case In New Jersey

Opinion / **Published On July 19, 2015 09:37 AM /**

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Stop. Honk. Go. Stop. Honk. Go.

To be early is to be on time. To be on time is to be late. To be late is unacceptable. If employees live on the East or West Coast and in major cities in the United States, most of us have gotten used to the stop, honk, go, and gridlock that comes with the daily commute. To fight fire with fire, we watch the news when we are getting dressed for work in the morning and build in the traffic patterns and door-to-door time it will take us from home to our desk.

Snow, sleet, rain or hail, during our morning drive in, we listen to traffic reports on NPR and local radio stations. Employees who have traffic down to a science, have the best Traffic Apps on our Smartphones and in our cars. Ideally, we do what we have to do to organize ourselves and ensure we are at work on time and without incident.

Not in the case of Andrea DeGerolamo of Berlin, New Jersey, who was a marketing coordinator for Fulton Financial Corporation.

Seeking unspecified financial damages and claims on her lost wages and benefits, DeGerolamo suffers from severe general anxiety and depression which has been diagnosed by her medical doctor as a disability. DeGerolamo is suing her former employer, Fulton Financial Corporation for wrongful termination after her bosses wouldn't change her work schedule so she could avoid rush hour. Her lawsuit alleges that her commute to work made her sick.

It is important to have compassion for DeGerolamo because mental illness, severe anxiety, and depression are real illnesses. According to data compiled by the Substance Abuse and Mental Health Services Administration, (SAMHSA), every year, approximately 42.5 million adult Americans suffer from some mental illness: depression, bipolar disorder or schizophrenia. Quantitative analysis of this data also reveals that about 9.3 million adults experience mental illness to the extent that they cannot perform their day-to-day routine activities or go to work.

Factoring in the law, DeGerolamo may have a case because it is incumbent upon an employer to reasonably accommodate an employee's disability.

Initially, Fulton Financial Corporation did accommodate DeGerolamo's request to work an abridged schedule between rush hours, but this changed.

Ask yourself why?

Don't find yourself on the wrong side of the equation like the two students who were given the assignment to build a bike and given all of the parts and a mammoth amount of spares for the project. One student conditioned in rote learning asked for the directions and built one bike, while the other student engaged in higher order thinking, critical analysis, research, synthesis, and evaluation, went off, learned the directions, shaped and applied them, and built 10 bikes.

Again—Why did Fulton Financial Corporation change their initial accommodation to DeGerolamo and why did the organization opt not to settle the case out of court with the former employee?

DeGerolamo's lawsuit alleges that after she told her employer about her anxiety and depression diagnosis, she took time off under the Family and Medical Leave Act (FMLA). When DeGerolamo returned to work, Fulton Financial Corporation gave her work a "poor performance," rating, gave her "clerical" work, and ultimately fired her.

Andrea DeGerolamo is a real person with very serious problems. The data on mental illness, anxiety, and depression should help employers think through how they want to approach these mental illness and disability discrimination cases similar to DeGerolamo's that are mounting all across the United States.

Statistics indicate that most of the cases settle out of court and in arbitration, and those that get on the court docket are usually dismissed because of strict standards. Nonetheless, these cases are popping up something fast and furious and doing so in whopping numbers.

DeGerolamo's medical doctor's testimony and evidence of how Fulton Financial Corporation accommodated her disability and the whys of the organizations change in their accommodation will determine if the lawsuit stands and if DeGerolamo prevails.

If DeGerolamo's prevails, the floodgates will open for employees who have been diagnosed as mentally ill and severely depressed. For the same reasons and more that DeGerolamo brought the disability discrimination case, employers need to stand at attention and be prepared in the event the 42.5 million Americans diagnosed as mentally ill bring similar cases.

Ultimately, a jury in New Jersey will decide if traffic jams are a part of life we hate but must all get used to, or if gridlock is a bonafide trigger for anxiety and depression. Until that time, DeGerolamo can take a ticket to stop, honk, and go, and join the millions of Americans who have horrible commutes on the East and West coasts and in major cities across the United States.