

Is At-Will an End Run Around ADA?

Brian T Johnson

The American's with Disabilities Act (ADA) was put in place back in July of 1990 by President George H.W. Bush in an attempt to protect people with disabilities both physical and mental from employment discrimination. However, are employees who should have certain protection under laws such as the ADA still vulnerable from discrimination by employers?

Pennsylvania, for example is an At-Will employment state, meaning an employee can be dismissed from a job for any reason that would not be considered illegal. At-Will also allows an employer to change the terms of employment (without notice) such as; the alteration of wages, termination of benefits, and the reduction of paid time off. It is this type of employment status that could be considered to be a loophole in the ADA protection, take into consideration the case below.

A 39-year-old disabled veteran who did not wish to be identified we will call Bob feels like he has reason to believe that he has been a victim of this loophole in the At-Will employment law. "I was working for a local company during which time I had some medical issues that are a result of my service-connected disabilities, a fact that I disclosed to my employer during my interview. I would have medical appointments that I needed to go up to the VA hospital in Lebanon for on occasion, think maybe 4 times in my initial 90 day probation period. This was something that I disclosed to the employer at time of interview and hire and they said they would accommodate," Bob said. "Three days short of my 90 day probationary period being up I was summoned to the HR department and was told that the position I was hired for was being consolidated and they could not keep me on staff. This was also strangely enough right after a big yearly event they have in which they need more people to help out," Bob continues. "I bumped into a former co-worker a few months later and was surprised to find out that not only was the position not consolidated but they had it filled within a month of my dismissal. The co-worker had told me that she felt that I had been given a raw deal when she overheard two supervisors talking about the reason they let me go was of my medical appointments. I had thought about a wrongful termination suite but looking into At-Will law and seeing that the burden of proof falls upon me to prove, made me feel like it would turn into a my word against theirs situation," Bob said.

Bob would go on to talk about being "laid off" or have his hours cut to the point where he would have to find another job over the duration of 2018, and his encounter with his former co-worker made him really start to think about his issues with employment. More importantly than that, is the fact that Bob is not the only person who has a legitimate claim to falling victim to this circumstance. What is worse is that of other's polled at the VA hospital, a staggering seventy-two percent feel like they have lost a job due to similar circumstances. Most of those polled said that they were "off the record" spoken to about the amount of time they missed working due to medical appointments, over half were asked at some point to start bringing proof that they were in fact going to appointments. Some would go on to say that they feel that in order to expedite and strengthen their dismissal certain standards were more strictly enforced on them than others after providing proof of medical appointments. This in order to possibly be able write

Commented [D1]: My overall comment is something I've given others - if you're going to make this more fiction-structured nonfiction (so, based around one character's story) rather than traditional nonfiction news-coverage-y that's OK with me for this, but, it doesn't get you off the hook for citing your information, or showing that you did your research.

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Commented [D2]: -I think you now have successfully described the origin of the policy, at least enough for this context.

Commented [D3]: -I like that you mentioned polling at the VA but you absolutely need to cite that study, or where you got that from, or something.

them up and create a “paper trail” of disciplinary action. What seems worse is that others have said that that paper trail has been used to help deny them unemployment benefits after dismissal from employment.

A lot has been said about the veteran community and this potential issue. However, they are only a small minority of a bigger majority. Disabled veterans, the mentally challenged, and countless others who are legitimately at a disadvantage both physically and mentally are all at risk under the At-Will status. What is even worse is that for as often as this seems to happen, there is very little being done about it. After asking a handful of employment attorneys not one of them were able to say if they knew of any precedent to investigate this issue, let alone try and solve the problem. As Bob found out the burden is on him to try and fight this issue, but how can he or anyone else for that matter when experts such as attorneys have no way of solving the problem?

This begs the question of what is the point of having laws like ADA and other protective measures if an employer can just claim that an employee was dismissed for a different reason that is completely bogus and hard for a dismissed employee to prove? This opens the door for all kinds of discriminatory dismissals in At-Will states, dismissals based on color, creed, religion, sexual orientation, and beyond. At what point should At-Will be revisited and adjusted to help keep discriminatory dismissals? In Bob’s case he is left with a fear of this possibly happening again, “I am so paranoid now, I am at the point where I feel like I need to push things of and risk conditions getting worse or risk losing another job because I chose to get care.”

Commented [D4]: Way too vague. a note I learned from Dr. Lange (did you have him?) was that if I'm writing in the passive voice, is it to get around citing actual facts/details? Here, you are. Tell me Who said What or don't try to make that argument.

Commented [D5]: Another trick I use against myself that you can use is that if I'm using amount descriptions like "as often" and "very little" then am I backing that up? You said "very little is being done," so give me some proof of that, because as it stands, as reader may as well assume that you made that up as your opinion. reference something. Maybe even that you looked in x, y, z and couldn't find info. etc. But if that statement hinges on the word of one man, who, with all due respect could be lying about asking attorneys, and who you didn't check up on, then don't try to make the argument.

Commented [D6]: -I like that you ended the piece with a quote from Bob. You successfully told me his story and made me feel for him.