

# HR law

## Even bad cases make it into court

*Attorney points out employment issues can make everyone shake their heads in disbelief*

By K. Tia Burke

A few months ago, a perplexed client contacted me for advice on an employment-related matter. The company had just received word that the federal Equal Employment Opportunity Commission believed that it had failed to provide one of its employees with a reasonable accommodation in violation of the Americans with Disabilities Act. My client had to decide whether to settle the case before it went to court—or try its luck with a judge and jury.

The less expensive proposition was to settle the case. However, the client was having trouble making a simple economic decision because its managers believed they went above and beyond the call of the ADA in trying to accommodate this employee. The employee was a clerk typist who was required to answer phones and type, sometimes from dictation. Her disability was a unique hearing impairment that rendered her unable to hear when any background noise such as ringing phones, copiers, fax machines or other voices were present. The client's offices were filled to overflowing – with former closets revamped into offices. None of the accommodations offered to the employee, including moving the employee to the quietest part of the building, removing the requirement that she answer phones and assigning the dictation part of her typing duties to others, were sufficient.

Instead, the employee, one of the most junior both in tenure and stature, wanted a private office instead of a cubicle. The employer did not have a private office to spare, and even if it did, it did not want to allocate such precious space to this employee, when other professional employees were relegated to closets and hallways.

The EEOC thought the employee's requested accommodation was a reasonable one and said settle or face a lawsuit. The case was headed to court – even though the employee's requested accommodation seemed crazy to this employer as well as to many others familiar with the case.

Employment issues often leave employers and employees alike shaking their heads in disbelief. In recognition of the sometimes bizarre facts generated in even a typical employment dispute, the *National Law Journal* publishes an annual list of the "Top 10 Wackiest Employment Law Cases." Though none of my clients' issues made the list – a circumstance for which I am annually grateful – 10 other attorneys' clients did.

Some of my favorites from this year's list include a clerk in a sex toy shop complaining about having to listen to lewd talk all day long and a candidate for a police office position who was refused for scoring too high on an IQ test. These cases, and others like them (such as the Hooters' waitress who recently settled her sexual harassment case) continue to make practice in this an area where sometime there is just no telling what will happen.

By the way, my advice to my client was to settle, which they did to avoid onerous litigation costs. If you are unsure of how your company may stack up against such claims, it might be best to consult with an attorney familiar with such issues before something, well, unusual happens.

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