



News & Types: Employment, Labor & Benefits Update

# Termination of "Startled" Employee After Supervisor Expressed Desire to Strangle Her Was Not Wrongful

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## EXECUTIVE SUMMARY

Under the Americans With Disability Act ("ADA"), an employer can be liable for failure to accommodate a qualified individual with a disability if the employer was aware of the disability and failed to accommodate the disability reasonably.

An employee, diagnosed with depression, bipolar disorder and post-traumatic stress disorder, failed to show that her termination was discriminatory or that her employer failed to reasonably accommodate her disability. *Scheidler v. State of Indiana, et al.* (decided Jan. 25, 2019). The Seventh Circuit recently upheld Scheidler's termination for inappropriate conduct following an argument in which she said she was startled by a supervisor saying, "I could just strangle you."

In 1999, Brenda Lear Scheidler began working at an Indiana prison where she learned an inmate wrote in his diary he wanted to torture her sexually. Scheidler reacted emotionally and left her employment and sought medical treatment for the trauma. She began working for the Indiana Department of Insurance ("IDOI") in 2006. In 2009, IDOI hired a recently released offender. This apparently scared Scheidler, and as a result she was diagnosed with depression, bipolar disorder, and post-traumatic stress disorder.

After returning from FMLA leave, Scheidler discussed her condition with one of her supervisors and some co-workers and asked them not to startle her, be loud or approach her suddenly. She received these accommodations and did not have any problems at work until 2013, when she applied for an open position in the spring. As Scheidler and her co-worker, Ronda Ankney, and a supervisor, Annette Gunter, were leaving for the day, they noticed that another co-worker, Mary Ann Williams was not at her station. Williams had also applied for the open position. In the elevator, Scheidler said that she was sure Williams would get the job because "it's who you know and who you blow." Ankney and Gunter told Scheidler that they disapproved, but did not report this comment.

On May 28, 2013, Scheidler went to Gunter's office to ask for clarification about a redistribution of duties in the department. Gunter said she did not know any more than Scheidler did. Gunter went to Ankney's cubicle and said, "I don't know what I'm going to do if I don't string her [Scheidler] up by the end of the week." Overhearing

the comment, Scheidler asked, “Are you talking about me?” Gunter turned, stretched her arms out, leaned into Scheidler, made a choking motion, and said, “I could just strangle you.” This startled Scheidler. A heated exchange ensued.

Scheidler reported the “cubicle incident” and the HR Director and State Personnel Department investigated and interviewed all three employees. The investigators learned about the “blow” comment that Scheidler made a few months earlier. The findings were reported to Commissioner Stephen W. Robertson, who decided to issue a written reprimand to Gunter for her inappropriate conduct during the cubicle episode and to terminate Scheidler because of her two instances of inappropriate conduct: her “blow” comment in the elevator and her participation in the cubicle episode. IDOI terminated her on July 8, 2013.

In her suit, Scheidler asserted claims against the state for disability discrimination (failure to accommodate, retaliation and discrimination); sex discrimination and retaliation in violation of various state and federal laws. The court granted summary judgment in favor of some, but not all, of Scheidler’s claims. Scheidler lost at trial and then appealed the grant of partial summary judgment, as well as an evidentiary ruling at trial.

Under the Americans With Disability Act (“ADA”), an employer can be liable for failure to accommodate a qualified individual with a disability if the employer was aware of the disability and failed to accommodate the disability reasonably. The closest Scheidler came to advancing a failure-to-accommodate claim was under the theory that she asked her coworkers not to startle her, but Gunter threatened to strangle her. However, the cubicle episode was an isolated, “one-off” event. She did not allege a failure to accommodate apart from the cubicle episode and, in fact, admitted that the state accommodated her prior to May 2013. The Court has previously held that reasonable accommodation under the ADA is a process, not a one-off event. Therefore, summary judgment for the State was affirmed.

In support of her retaliation claim, Scheidler argued that her elevator comment—“It’s who you know and who you blow”—was statutorily protected activity. A retaliation claim requires statutorily protected activity, which generally requires the plaintiff to not only have a subjective (sincere, good faith) belief that she opposed an unlawful practice; her belief must also be objectively reasonable. Scheidler failed both the subjective and objective factors because the court found she did not have a sincere, good-faith belief she opposed an unlawful practice and because her comment did not involve discrimination prohibited by Title VII. The court noted she testified she did not think her comment was sexual and even if it could be interpreted as involving a sex act, that did not make the statement a complaint of sex discrimination.

Under the ADA, employers must reasonably accommodate qualified individuals with mental or physical disabilities. In the Scheidler case, the employer engaged in a dialogue with the employee and was able to provide the requested accommodations for several years. Her employer could lawfully discipline or terminate her employment without violating the ADA and other antidiscrimination laws. Nevertheless, the IDOI was embroiled in litigation for six years as a result.