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Wal-Mart Dodges Pharmacist's ADA Class Action

By Jeff Sistrunk

Law360, Los Angeles (March 04, 2014, 10:08 PM ET) -- A Washington state federal judge on Tuesday tossed a putative class action accusing Wal-Mart Stores Inc. of discriminating against recovering drug addicts in violation of the Americans with Disabilities Act, agreeing with the retail giant that the plaintiff wasn't fired on the basis of his addiction but rather because he had broken the law.

U.S. District Judge Ronald B. Leighton dismissed James H. Bryan's suit with prejudice, rejecting Bryan's argument that, under the ADA, a person's addiction effectively "trumps" addiction-related misconduct. Bryan sued Wal-Mart over its policy of not employing pharmacists who have faced disciplinary action by a state pharmacy board, contending the policy disparately impacts recovering drug addicts like him.

In its motion to dismiss, Wal-Mart **argued** that Bryan was fired after the policy went into effect because he had been charged with forging prescriptions.

"It is apparent from the complaint and the materials that Wal-Mart terminated Bryan because he had criminally forged prescriptions, and because that led to the suspension of his pharmacy license," Judge Leighton wrote. "He was not terminated because he was a disabled, rehabilitated drug addict. That termination is not actionable under the ADA, and Bryan cannot amend his complaint to make it so."

Bryan's attorney, Daniel F. Johnson of Breskin Johnson & Townsend PLLC, told Law360 he plans to appeal the ruling, saying the court "misunderstood the claims in the case and relied on facts that were not in the record and are not true."

"Mr. Bryan and the class claim Wal-Mart terminated them, en masse, based on a policy change barring employment of anyone with an adverse event on his or her pharmacy license," Johnson said. "Plaintiff was fully rehabilitated before Wal-Mart employed him, and was required to and did disclose his record of addiction and rehabilitation to Wal-Mart. Wal-Mart cannot have terminated him 'because of' his drug-related misconduct because that occurred before Wal-Mart even hired him."

Johnson added that the reason for Wal-Mart's decision is not relevant to his client's disparate impact claim. He contended that, because Wal-Mart's policy tends to screen out people with disabilities, such as recovered addicts, "what matters for purposes of disparate impact is not why the company took that action but whether it was justified by business necessity."

Bryan **filed the suit** after he was fired from his job as a staff pharmacist at Wal-Mart following the institution of a company policy in 2011 not to employ pharmacists with a history of adverse actions taken against their state licenses.

Bryan received his pharmacy license in 1996, but by 2002, he had become addicted to

prescription drugs, according to his complaint. He was charged with 17 counts of prescription forgery by the Tacoma Police Department that year, and his license was subsequently suspended.

Bryan then underwent a supervised rehabilitation program with the Washington Recovery Assistance Program for Pharmacists, and the charges were dismissed, according to court documents.

In 2007, after Bryan's license was reinstated, he started working for Wal-Mart stores in central Washington state, first as a pharmacy intern and then as a staff pharmacist, the complaint said. Wal-Mart was aware of Bryan's prior drug addiction and license suspension, he said.

But in October 2011, the company fired Bryan after instituting a nationwide policy that "anyone with a history of adverse action by a board of pharmacy would no longer be eligible for employment." Bryan alleged the policy has a disparate impact on individuals who are recovered addicts because many others have been fired from or denied employment at Wal-Mart's pharmacies.

Wal-Mart countered that it was justified in firing Bryan because he lost his pharmacist's license not because he was an addict but because he forged prescriptions.

Bryan responded that while an employer may take reasonable measures to protect itself against theft, the statute underlying that interest shouldn't be read to "trump" the ADA. Wal-Mart said the ADA distinguishes between addiction and addiction-related misconduct and asserted that Bryan can't cite any cases to support his argument that a person's addiction disability trumps addiction-related misdeeds.

Judge Leighton agreed with Wal-Mart in Tuesday's ruling, finding that the facts support the retailer's claim that it fired Bryan because of his criminal forgery, not because he was an addict.

A Wal-Mart representative did not immediately respond to a request for comment late Tuesday.

Bryan is represented by Daniel F. Johnson of Breskin Johnson & Townsend PLLC and Jeffrey Needle of the Law Office of Jeffrey L. Needle.

Wal-Mart is represented by Roman D. Hernandez, Jamila A. Johnson and Thomas M. Triplett of Schwabe Williamson & Wyatt PC.

The case is James H. Bryan v. Wal-Mart Stores Inc., case number 3:13-cv-05934, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Daniel Siegal and Zachary Zaggar. Editing by Christine Chun.

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