



One Minute Memo™

Mammone v. President and Fellows of Harvard College

On May 12, 2006, the Massachusetts Supreme Judicial Court (SJC) issued a significant decision, affirming summary judgment for the President and Fellows of Harvard College (Harvard), and holding that a handicapped employee who engages in egregious workplace misconduct will be held to the same standard as a non-handicapped employee who engages in similar misconduct. Specifically, the SJC held that "a handicapped person who engages in egregious misconduct, sufficiently inimical to the interests of his employer that it would result in the termination of a non-handicapped employee, is not a qualified handicapped person within the meaning of G.L. c. 151B" and fails to make out a prima facie case of discrimination. Once the SJC found that the plaintiff, Michael Mammone's (Mammone), misconduct evidenced that he could not perform the essential functions of his job, the burden never shifted to Harvard to show that it could not provide him a reasonable accommodation.

Mammone worked for seven years as a staff assistant at the reception desk of Harvard's Peabody Museum (Museum). During his employment, Mammone started a website decrying the wages Harvard paid to its employees. On at least 10 separate occasions while on duty at the Museum, Mammone, who had significant contact with the public, distributed flyers advertising his website, used his personal laptop to update it, and clapped and danced to protest songs. At least one Museum employee complained that Mammone's belligerent attitude affected both employees and visitors. Shortly thereafter, Mammone came to work in a bright, traditional East Indian dress and spoke loudly on the phone to the police, his family, and an attorney with the American Civil Liberties Union. After Mammone refused his supervisor's request for a private meeting, she summoned two Harvard police officers for assistance. The officers gave Mammone five warnings and ultimately arrested him for trespassing and dragged him from the Museum's lobby.

Following his arrest, Harvard terminated Mammone's employment. Mammone applied for short-term disability benefits and Harvard agreed to delay his termination date until the day his benefits expired. When his benefits expired six months later, Mammone sued Harvard for employment discrimination, alleging that it terminated his employment because of his mental disability and failed to offer him a reasonable accommodation. In rejecting Mammone's claim, the SJC relied on its 1995 decision in *Garrity v. United Airlines, Inc.*, 421 Mass. 55 (1995), in which it held that a handicapped employee who engages in egregious workplace misconduct can be held to the same standard as a non-handicapped employee who engages in similar misconduct.

Mammone attempted to distinguish his case, contending that the *Garrity* holding should be limited to cases involving workplace misconduct caused by alcoholism or other substance dependency disorders and should not apply to misconduct caused by certain

Breadth. Depth. Results.

handicaps like his own bipolar disorder. The SJC rejected this argument, and found that nothing in chapter 151B suggests a legislative intent to provide different protections against discrimination for persons suffering from one form of handicap (alcoholism) than the protections the statute provides to persons suffering from other disabilities.

Justice Greaney dissented on the grounds that it was for a jury, not the Court, to determine whether Mammone's conduct amounted to egregious workplace misconduct or a manifestation of his bipolar disorder. Justice Greaney chided the majority for excluding from Mass. Gen. Laws c. 151B "an entire category of persons with mental illnesses, including bipolar disorder, whose symptoms include occasional displays of inappropriate, and sometimes bizarre, workplace behavior." He also stated that Harvard had a duty to initiate an interactive process and offer Mammone a reasonable accommodation, such as an immediate leave of absence, once Mammone's supervisor became aware that he was experiencing a severe manic episode and needed medical attention.

The Court's decision makes it clear that handicapped employees are not entitled to more protection than their non-handicapped brethren if their workplace misconduct is sufficiently egregious and inimical to their employer's interests. Similarly, the Court is loathe to provide greater protections to individuals with one specific handicap than it provides to all other handicapped individuals.

If you have any questions on this decision, please contact the Seyfarth Shaw LLP attorney with whom you work or any Labor & Employment attorney on our website at www.seyfarth.com.

This One Minute Memo is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. For further information about these contents, please contact any Seyfarth Shaw LLP office. Copyright © 2006 Seyfarth Shaw LLP. All Rights Reserved.