MUST EMPLOYERS ACCOMMODATE EMPLOYEES WHO DO NOT THEMSELVES HAVE A DISABILITY?

A new federal appeals courts decision under the Americans with Disabilities Act has shed new light on whether an employer must accommodate an employee, who has a disabled relative to look after. The decision will have significant consequences as the country's elderly population increasingly needs care from working relatives. The verdict came when an employee, Ms. Eunice Magnus, sued under the ADA, alleging that St. Mark United Methodist Church, Chicago, where she worked as a secretary terminated her, based on allegedly "unfounded assumptions" regarding her relationship with her mentally disabled daughter. Magnus says that she had a disabled daughter who lived in an assisted-living facility and she was permitted to take her home on the weekends and hence she had asked for the weekends off. The Church refuted her allegations and said that the real reason for her termination was that her work was unsatisfactory and that she was unwilling to work on weekends. The Church maintained that her job performance had flagged and she was not entering necessary information into the daily log reports and her scheduling had gone awry. The church also had issues with her operating the telephone answering machine and tardiness in bulletin production. Magnus admitted that she was every now and then unfocused because of her daughter's condition. She also admitted she often took calls from the assisted-living facility to resolve any issues regarding her daughter. The Church had hired Ms. Magnus for a part-time secretarial position, around 6 years ago. Her position required working weekends. The Church came to know that she had a disabled daughter, only after hiring her. Initially, this did not pose a problem as her son took care of his disabled sister. In 2008 Magnus was offered a full-time secretarial position which she accepted. Her work did not need her to work on weekends so there was no problem. The Church said that they had to ask Magnus to work weekends as the other secretary who was doing weekends found the schedule too taxing and suggested that between the two secretaries they work on alternate weekends. Magnus refused, citing reasons that her son was not available anymore to care for her disabled daughter and she needed to be there. The court however, ruled in the Church's favor, saying that although it acknowledged that the Americans with Disabilities Act prohibits discrimination against a "qualified individual" because of his or her "relationship or association" with a disabled person and even though ADA does not make it mandatory for workplaces to accommodate non-disabled employees, even if they have a relationship with a disabled person, the Church went out of its way, to find ways and means to help Magnus get the weekends off. Moreover, both parties "agree that [the employee's] unwillingness to work weekends was a contributing and possibly primary reason for her termination." The court concluded that it does not see any bias in the termination. The case brings into relief four factors that need to be addressed. First, that a growing number of employees are ever more under pressure to take care of sick or disabled relatives and have to juggle their time between work and caring for them. Secondly such employees will see their work performance dip and will face marginalization, termination or the need to resign because of their family responsibilities. Thirdly employers may lose valuable employees if no accommodation is provided to them to ably fulfill their care giving responsibilities and last a law should be made that mandates that an accommodation be made for employers who have someone to care of owing to age or disability. It is a commendable act and needs to be encouraged.