

Accommodating Disability: Alcoholism is Protected Under the ADA



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Is it possible for an alcoholic to claim protected status under the Americans with Disabilities Act (ADA)? The short answer is "yes."

Former University of Southern California (USC) football coach Steve Sarkisian made headlines when he was fired by the school in October, of 2015. In a statement at the time, Pat Haden, USC Athletic Director said, "After careful consideration of what is in the best interest of the university and our student-athletes, I have made the decision to terminate Steve Sarkisian, effective immediately."

Mr. Sarkisian made headlines again when he filed a lawsuit against the school for violating his rights under California disability law in December 2015.

In his complaint, Mr. Sarkisian made broad allegations that included:

- **Breach of written contract**
- **Failure to engage in the interactive process**
- **Failure to Accommodate**
- **Discrimination on the basis of disability**
- **Retaliation**
- **Violation of confidentiality of medical information**
- **Wrongful termination**

In what is likely to be a complicated legal action, Mr. Sarkisian seeks a financial award of \$12.6 million in salary, plus unspecified millions in damages. Media reports place the total damages figure at approximately \$30 million.

A cautionary tale: Alcoholism and discrimination

While the dialogue between Mr. Sarkisian, USC, and California law will underpin the jury trial in this matter, it is a fact that "a person who is an alcoholic may be an 'individual with a disability' under the federal ADA."

Being fired for illegal use of drugs, or alcohol, seems a straightforward reason for termination. Yet, use of illegal drugs and alcohol are not considered in the same light by the ADA.

According to a technical assistance manual issued by the EEOC, "While a current illegal user of drugs has no protection under the ADA if the employer acts on the basis of such use, a person who currently uses alcohol is not automatically denied protection simply because of the alcohol use."

In the current case, Mr. Sarkisian and USC disagree on what was said, and done, in the time leading up to his dismissal from USC. Mr. Sarkisian reports in his complaint that he requested time off to gain immediately needed help with an alcohol problem that was "spiraling out of control."

In response, USC states Mr. Sarkisian did not mention a problem with alcohol, did not request time off, and resisted actions taken by the university to offer him assistance.

Court action and headlines will very likely tarnish the reputation of USC, and Mr. Sarkisian. The incident is a heads-up to employers about the necessity of understanding the fine points of their unique state laws, the ADA, and alcohol use.

Some further points of the ADA on alcoholism include:

- **Those who use alcohol may be required to meet the same conduct and performance standards as other workers.**
- **Employers may discharge workers who are alcoholics and whose use of alcohol leads to performance impairment that would trigger disciplinary action with other employees.**
- **The ADA calls for reasonable accommodation efforts to allow for self-help, rehabilitation, or other medical care.**
- **State and federal disability protections are complex and, given the publicity in this case, there will be no sure winner.**

Ensure that your managers and supervisory staff are well informed of the accommodations and efforts needed to avoid charges of discrimination, wrongful termination retaliation. If you have questions about your HR policies, we have the answers you need.

Contact McCloskey Partners, LLC today to discuss your current employment related practices to help ensure that your risks are minimized. Contact McCloskey Partners at 215-716-3035 or services@mccloskeypartners.com.

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