

# **You Decide: Employee Misconduct or Failure to Accommodate a Disabled Employee?**

## **By: Beth Lincow**

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According to the [Equal Employment Opportunity Commission](#), a popular drugstore chain violated the Americans with Disabilities Act by firing a worker with diabetes after she opened a bag of chips while on duty as a cashier. We are asking our readers to weigh in regarding whether the termination was justified.

According to the EEOC, Josefina Hernandez was on duty as a cashier at Walgreens' South San Francisco store when she opened a \$1.39 bag of chips because she was suffering from an attack of hypoglycemia (low blood sugar). As detailed by the EEOC, Hernandez almost always carried a piece of candy in her pocket for situations when she felt her blood sugar getting low, but she didn't have anything with her at the time of the incident and felt she needed to act quickly. The agency also alleges that Hernandez had worked for Walgreens for almost 18 years with no disciplinary record, and Walgreens was aware of her diabetes.

After being informed that Hernandez had eaten the chips while on duty and had not paid for them until after the shift, Walgreens terminated her employment. The EEOC subsequently filed the lawsuit in question (EEOC v. Walgreen Co., Case No. CV11-4470-JSC), which seeks monetary damages, including back pay, compensation for emotional distress and punitive damages, as well as measures to prevent future discrimination by the employer.

As employers are aware, the ADA prohibits disability discrimination and requires employers to make reasonable accommodations to employees with disabilities. In this case, was taking the bag of chips and not immediately paying for it a reasonable accommodation that Walgreen's must provide?

At first glance, it appears that Walgreens may have overreacted by firing the employee, given the costs of the chips and the cost of a potential disability discrimination lawsuit. Then again, we really only know the EEOC's side of the story so far. In the meantime, let us know what you think and stay tuned for further updates.

## **About Beth Lincow Cole**

*The Law Office of Beth Lincow Cole is committed to helping employers comply with federal and state employment law and avoid potential business-wrecking lawsuits. If your company needs employee or management training or assistance in drafting, reviewing, or revising its EEOC/discrimination policies, contact employment law attorney [Beth Lincow Cole](#).*

