



## **Federal Judge Appoints Lawyer for Employee Allegedly Fired For Jury Service**

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**By Scott Cruz**

Employers, take note: if you retaliate or threaten to retaliate against an employee because he or she will be required to serve on a jury, that employee may be able to sue you in federal court for lost wages, reinstatement, other employment related benefits and attorneys' fees. Worse, you may severely annoy a federal judge.

Retailer hhgregg recently learned this lesson the hard way. James E. Henders worked for hhgregg as a sales associate. After reporting for jury duty and subsequently being selected to serve on a jury trial that was scheduled to last six to eight weeks, Henders returned to work and advised his manager that he would be on jury duty for the next six to eight weeks. On his next scheduled work day, he was called into the store manager's office and given his third warning for being "in draw" (*i.e.*, having low sales), and told that he had not been selling enough merchandise or following the store's point process for approaching customers. As a result, his employment was terminated. Notably, during his performance review conducted the week prior by the same store manager, no third warning for being "in draw" was issued. Rather, Henders was told to evaluate his strengths and weaknesses and encouraged to increase his sales.

After learning of his termination, Henders contacted the chambers of Judge James F. Holderman, the Chief Judge of the U.S. District Court for the Northern District of Illinois. Henders advised the Chief Judge's staff that he believed that hhgregg had terminated him in retaliation for being selected for extended jury service. Following a meeting with the former employee, Judge Holderman sent a letter to hhgregg informing it of Henders' allegations and asking it to respond in writing. The company did not do so.

In light of hhgregg's failure to respond, Judge Holderman found that Henders' retaliation claim has "probable merit" based on the information he had provided the court. Judge Holderman noted that although every other sales associate also had been "in draw" prior to Henders' termination, only one other had been terminated for that reason, and that employee was given the option to work in the warehouse rather than be fired. Thus, the court reasoned that the only apparent difference between Henders and other similarly situated sales associates is that he had just informed hhgregg that he



would need to miss work for the next six to eight weeks because of jury duty. Judge Holderman also believed that hhgregg's jury duty policy, which requires it to pay minimum wage for the first 30 days of jury duty, and half of minimum wage thereafter, also provided a plausible motive for firing Henders. Having found that there was probable merit to Henders' claim, Judge Holderman appointed a lawyer to represent Henders, directing the attorney to further review Henders' juror discrimination claim and determine whether a civil lawsuit should be filed.

There are several lessons here for employers.

First, employees are entitled to time off in order to serve on juries. Firing an employee in close proximity to extended jury service can be risky. If this becomes necessary, thoroughly document the reasons for the employee's discharge and be prepared to defend the decision in court.

Second, although it seems that a policy providing generous pay benefits for employees during jury service could just as easily be taken as evidence of an employer's support for jury service, Judge Holderman's identification of hhgregg's policy as potential evidence of retaliatory motive may require employers to reevaluate their policies. At a minimum, employers should structure their policies so that they do not create an incentive for managers to retaliate against employees who are called to serve on a jury.

Finally, and we cannot stress this enough, if you do receive a letter from a federal judge asking you to explain why you fired a juror, ignoring the letter may not be the best course of action.

### **More Information**

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