



**Phillip Hawkins v.  
Anstar Biotech Industries**

***Case ReportBook***

Authored by:

**Chris Attorney**  
**[Your Organization Name Here]**

Friday, August 23, 2013

**Poole + Rainford**

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## ***Introduction***

This ReportBook contains a collection of case analysis reports we have prepared for this matter.

It is important to understand that these reports are working documents, not polished or final product. We're using them as tools to organize and analyze the critical knowledge being turned up during our investigation. As the analysis process continues, the information in these reports will grow and change.

As you review these reports, it's highly likely you'll spot inaccuracies. You'll probably also think of important case information that should be included but does not yet appear. In either case, please be sure to let us know. Please mark up a copy of this ReportBook with any such edits and get it back to us as soon as possible. We'll use your input to update the database of critical case knowledge from which ReportBooks are generated.

An important part of the reason for circulating ReportBooks is to get everyone involved in the case analysis process. We've found that it expedites the process of developing a complete and accurate understanding of the matter at hand.

Thank you for your assistance!

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***Issue Outline***

## Issue Outline

Full Name	Description	# Facts
<b>1 Wrongful Termination</b>		6
<b>2 Age Discrimination</b>	<p>If you expect the case team to grow over time or are sharing case information with a client, you might find it worthwhile to include a synopsis of each issue in this field.</p> <p>Entering a description of each issue one time means you can give new team members a detailed report that saves you the effort of explaining the issues over and over again. Sure you'll provide some verbal explanation, but it can be driven by questions people have after reading the basics.</p> <p><b>Each cell in this field can hold 10,000 characters by default.</b> 10,000 characters is equal to 5-6 single-spaced pages of text. Please note that this 10,000 character default maximum is true for all description type fields in CaseMap, e.g., Fact Text, not just for Issue Description.</p>	8
<b>2.1 Hawkins Specific</b>		6
<b>2.2 Pattern &amp; Practice</b>		1
<b>3 Retaliation</b>		6
<b>3.1 Transfer</b>		1
<b>3.2 Demotion</b>		3
<b>4 Deserved Termination</b>	Even though Philip Hawkins wasn't fired for cause, it will be interesting to see what facts might lead jurors to feel he deserved termination.	4
<b>5 Damages</b>		5
<b>5.1 Failure to Mitigate</b>		4
<b>5.2 Lost Wages</b>		1
<b>5.3 Mental Anguish</b>		3

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***Cast of Characters - Persons***

## Cast of Characters - Persons

Full Name	Role In Case	Type +	Key	# Fact T...
Hon. Julian Coffman	Judge in California State Court - Orange County who's been assigned the case.	Judge		0
Linda Collins	Anstar Biotech Industries Sales Manager - Philip Hawkins made derogatory comments about her to Karen Thomas at company 4th of July picnic.	Fact Witness	✓	2
Randy Fosheim	Anstar Biotech Industries plant manager - Was at the 4th of July Picnic where Philip Hawkins apparently made derogatory remarks to Linda Collins. Survived the Reduction in Force.	Fact Witness		1
Anne Freeman	Plaintiff damage expert	Expert Witness		0
Philip Hawkins	<b>Plaintiff</b> - Former Vice President of Sales at Anstar Biotech Industries.	Fact Witness	✓	24
Robert Kalinski	Defense age discrimination expert	Expert Witness		0
William Lang	<b>CEO of Anstar Biotech Industries.</b> Decided that poor financial forecasts required Reduction in Force.	Fact Witness	✓	11
George Ny	Anstar Biotech Industries accounts receivable collections specialist let go in RIF	Fact Witness		1
Gregory Poole	Attorney from Poole and Rainford who is counsel for Philip Hawkins.	Opposing Counsel		0
Hank Randle	Anstar Biotech Industries plant worker let go during RIF.	Fact Witness		1
George Regan	Henkle & Lee employee in charge of Anstar Biotech Industries audit. First to notice that Philip Hawkins was booking sales without invoicing until the following month.	Fact Witness		0
Carol Sanders	Outside Employment Counsel for Anstar Biotech Industries	Opposing Counsel		0
Susan Sheridan	<b>Former Anstar Biotech Industries employee terminated prior to Philip Hawkins. Has her own suit against Anstar Biotech Industries. We</b>	Fact Witness	✓	3



## Cast of Characters - Persons

Full Name	Role In Case	Type +	Key	# Fact T...
**	<b>can expect her to back up key portions of Philip Hawkins story.</b>	**	**	**
Karen Thomas	HR Manager at Anstar Biotech Industries - Heavily involved in the Reduction in Force planning.	Fact Witness	✓	1
Frank Varvaro	Anstar Biotech Industries salesperson - Expected to testify that Philip Hawkins leaned on him to book fake sales. Survived the Reduction in Force.	Fact Witness	✓	2

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***Cast of Characters - Organizations***

## Cast of Characters - Organizations

Full Name	Role In Case	Key	# Fact Text
Anstar Biotech Industries	<b>Defendant</b>	✓	9
Converse Chemical Labs	Where Philip Hawkins worked before Anstar Biotech Industries.		2
EEOC			0
Henkle & Lee	Accounting firm that audits Anstar Biotech Industries. Discovered irregularities in marketing expenses.		0

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***Fact Chronology***

## Fact Chronology

Date & Time	Fact Text	Source(s)	Key	Status +	Linked Issues
Mon 11/25/2002	William Lang meets Philip Hawkins while touring Converse Chemical Labs plant in <b>Bakersfield</b> .	Deposition of William Lang, 25:14; InterviewNotes, Email from Phil Hawkins at 20050923 1514 to William Lang		Disputed by: Us	
12/??/2002	William Lang invites Philip Hawkins to visit Anstar Biotech Industries facilities in Irvine.	InterviewNotes	✓	Prospective	Wrongful Termination
01/??/2003	William Lang offers Philip Hawkins <b>Sales Manager</b> position at Anstar Biotech Industries.	InterviewNotes, Email from Phil Hawkins at 20050923 1514 to William Lang		Undisputed	Retaliation
Mon 01/13/2003	<b>Philip Hawkins joins Anstar Biotech Industries as a Sales Manager.</b>	Anstar Biotech Industries Employment Records		Undisputed	
Mon 12/01/2003	Philip Hawkins promoted to Anstar Biotech Industries VP of Sales.	InterviewNotes		Undisputed	Retaliation
Fri 01/09/2004 to Wed 01/21/2004	Philip Hawkins negotiates <b>draft</b> Hawkins Employment Agreement with William Lang.	Hawkins Employment Agreement	✓	Undisputed	Wrongful Termination
02/??/2004	William Lang tells Philip Hawkins that he has changed his mind regarding the Hawkins Employment Agreement. It is not in force as it was never signed and changes were not finalized.	Philip Hawkins, Deposition of William Lang, 11:3.	✓	Disputed by: Opposition	Wrongful Termination
03/??/2004	Susan Sheridan has dinner with Linda Collins and complains about Anstar Biotech Industries management.	Deposition of Linda Collins, 33:15.		Disputed by: Opposition	
Wed 05/11/2005	Philip Hawkins receives Hawkins Performance Review from William Lang. Is rated a 1 <b>"Outstanding Performer."</b>	Hawkins Performance Review	✓	Undisputed	Wrongful Termination, Deserved Termination
06/??/2005	William Lang makes decision to reduce size of staff.	Deposition of Karen Thomas 43:19		Disputed by: Us	Hawkins Specific
07/??/2005	Susan Sheridan is terminated.	Deposition of Philip Hawkins		Undisputed	Pattern & Practice

## Fact Chronology

Date & Time	Fact Text	Source(s)	Key	Status +	Linked Issues
Mon 07/04/2005	Philip Hawkins allegedly makes derogatory remarks about Linda Collins to Karen Thomas during Anstar Biotech Industries Fourth of July picnic. Randy Fosheim in attendance.	InterviewNotes	✓	Disputed by: Opposition	Deserved Termination
Tue 07/12/2005	Anstar Biotech Industries second quarter sales announced. Sales have dropped by 8%.			Undisputed	Demotion, Deserved Termination
Sat 07/30/2005	Philip Hawkins <b>demoted</b> to sales manager.	Deposition of Philip Hawkins, 24:18		Undisputed	Demotion
Tue 08/02/2005 #1	Philip Hawkins and William Lang meet.	????		Undisputed	Hawkins Specific
U U Tue 08/02/2005 #2	Philip Hawkins alleges that William Lang tells him "The old wood must be trimmed back hard."	Complaint, p. 8; Deposition of Philip Hawkins, 21:13; Hawkins Letter of 9/19/2005, Hawkins Letter of 8/2/2005	✓	Disputed by: Us	Hawkins Specific, Demotion
Thu 08/11/2005	Philip Hawkins <b>transferred</b> to Anstar Biotech Industries office in Fresno.	Deposition of Philip Hawkins, p.43, 118.		Undisputed	Transfer, Deserved Termination
Fri 08/12/2005	Frank Varvaro has lunch with Philip Hawkins.	Deposition of Philip Hawkins, 52:3-14		Undisputed	
U Mon 09/19/2005	Philip Hawkins writes letter to William Lang complaining about the way he's being treated and alleging plan to eliminate older staff during reduction in force.	Hawkins Letter of 9/19/2005		Undisputed	Wrongful Termination, Hawkins Specific
Tue 09/27/2005	William Lang meets with Frank Varvaro regarding RIF plans.	Deposition of William Lang, 101:14		Disputed by: Us	Age Discrimination
Fri 11/11/2005	Reduction in force takes place. 55 Anstar Biotech Industries employees are let go including Philip Hawkins. Among others released were George Ny, and Hank Randle.		✓	Undisputed	Wrongful Termination, Hawkins Specific
Tue 11/15/2005	<b>Philip Hawkins turns 51.</b>	Deposition of Philip Hawkins, 56:11-23		Undisputed	Hawkins Specific

## Fact Chronology

Date & Time	Fact Text	Source(s)	Key	Status +	Linked Issues
Tue 11/22/2005	<b>Philip Hawkins files suit.</b>	Complaint		Undisputed	
Wed 12/14/2005	Philip Hawkins turns down job offer from Converse Chemical Labs.	Rumor William Lang heard		Prospective	Failure to Mitigate
01/??/2006	Philip Hawkins is diagnosed as suffering <b>Post Traumatic Stress Disorder.</b>				Mental Anguish
01/??/2006	Philip Hawkins meets with Susan Sheridan	Rumor William Lang heard		Prospective	
02/??/2006	Philip Hawkins begins seeing psychiatrist on a weekly basis.	Deposition of Philip Hawkins, 95:18		Undisputed	Failure to Mitigate, Mental Anguish
04/??/2006	Philip Hawkins turned down for positions with two companies the names of which he could not recall during deposition.	Deposition of Philip Hawkins, 97:21		Disputed by: Us	Failure to Mitigate
Fri 04/14/2006 - Tue 04/18/2006	Hawkins takes trip to Las Vegas. Spends weekend at the craps tables and is accompanied by a woman named "Sadie." Did not seem depressed or to be seeking employment -- Philip Hawkins didn't that is.	Investigative Report		Disputed by: Opposition	Failure to Mitigate, Lost Wages, Mental Anguish

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***Document Index***



## Document Index

	Bates - Begin	Bates - End	Date	Full Name	Type +	Author(s)	Recipient(s)	Description
U	P001232	P001232	Sat 12/28/2002 10:10 a.m. ET	Email from Phil Hawkins at 20021010 to William Lang	E-mail	Philip Hawkins	William Lang	Email Philip Hawkins wrote William Lang following their first meeting.
U	P001233	P001233	Tue 08/02/2005	Hawkins Letter of 8/2/2005	Letter	Philip Hawkins	William Lang	Philip Hawkins complains about demotion and alleges William Lang made age-based statements.
U	P001234	P001234	Mon 09/19/2005	Hawkins Letter of 9/19/2005	Letter	Philip Hawkins	William Lang	Philip Hawkins complains to William Lang about sales processes.
U	P001235	P001235	Fri 11/11/2005	Lang Letter of 11/11/2005	Letter	William Lang, Karen Thomas	Philip Hawkins	Letter Philip Hawkins was sent following Reduction in Force.
	P001267	P001268	Tue 09/27/2005	Letter from William Lang to Carol Sander, Esq.	Letter	William Lang	Carol Sanders	Redacted. Letter from William Lang to his employment counsel re RIF preparations.
U	P001269	P001278	Thu 11/10/2005	Reduction In Force Announcement	Internal memo	William Lang	Anstar Biotech Industries Staff	
	P001279	P001279	Fri 11/11/2005	Lang Memo to Regan	Internal memo	William Lang	George Regan	
	P001284	P001284	Tue 05/03/2005	Varvaro Tip Letter	Letter	Frank Varvaro	George Regan	Frank Varvaro alerts accounting firm to possible fake invoices arranged by Philip Hawkins.
U	P001334	P001356	06/??/2004	Hawkins Employment Agreement	Contract	William Lang, Philip Hawkins		Draft agreement prepared in conjunction with Philip Hawkins promotion.
U	P001357	P001362	08/??/2005	Hawkins Performance Review	Performance Review	William Lang	Philip Hawkins, Karen Thomas	Philip Hawkins receives highest ranking.
U	P001401	P001401	Mon	Email from Phil	E-mail	Philip Hawkins	William Lang	

## Document Index

Bates - Begin	Bates - End	Date	Full Name	Type +	Author(s)	Recipient(s)	Description
**	**	09/19/2005 3:14:05 p.m. ET	Hawkins at 20050923 1514 to William Lang	**	**	**	**
P001450	P001454	Fri 06/17/2005	Thomas Memo to File	Internal memo	Karen Thomas		
P001554	P001560	Wed 03/17/2004	Sheridan 2004 Performance Review	Performance Review	Karen Thomas	Susan Sheridan	
P002000	P002000	Mon 04/18/2005 10:33:48 p.m. ET	Email from Phil Hawkins at 20050418 2233 to multiple recipients	E-mail	Philip Hawkins	William Lang, Karen Thomas	
P002001	P002001	Tue 04/19/2005 9:52:50 a.m. ET	Email from Phil Hawkins at 20050419 0952 to George Ny	E-mail	Philip Hawkins	George Ny	
P002002	P002002	Fri 04/15/2005 3:15:41 p.m. ET	Email from Phil Hawkins at 20050415 1515 to Hank Randle	E-mail	Philip Hawkins	Hank Randle	
P002003	P002003	Fri 04/15/2005 3:16:31 p.m. ET	Email from Phil Hawkins at 20050415 1516 to Hank Randle	E-mail	Philip Hawkins	Hank Randle	
P002004	P002004	Mon 04/18/2005 4:01:41 p.m. ET	Email from Phil Hawkins at 20050418 1601 to multiple recipients	E-mail	Philip Hawkins	Karen Thomas, Frank Varvaro, George Regan	
P002005	P002005	Mon 04/18/2005 10:22:21 p.m.	Email from Phil Hawkins at 20050418 2222	E-mail	Philip Hawkins	Hank Randle	

## Document Index

Bates - Begin	Bates - End	Date	Full Name	Type +	Author(s)	Recipient(s)	Description
**	**	ET	to Hank Randle	**	**	**	**
P002006	P002006	Mon 04/18/2005 11:53:33 p.m. ET	Email from Phil Hawkins at 20050418 2353 to Karen Thomas	E-mail	Philip Hawkins	Karen Thomas	
P002007	P002007	Mon 04/18/2005 11:39:56 p.m. ET	Email from Phil Hawkins at 20050418 2339 to Hank Randle	E-mail	Philip Hawkins	Hank Randle	
P002008	P002008	Tue 04/19/2005 3:20:25 p.m. ET	Email from Phil Hawkins at 20050419 1520 to Frank Varvaro	E-mail	Philip Hawkins	Frank Varvaro	
P002009	P002009	Tue 04/19/2005 6:01:01 p.m. ET	Email from Phil Hawkins at 20050419 1801 to Karen Thomas	E-mail	Philip Hawkins	Karen Thomas	
P002010	P002010	Mon 04/18/2005 4:06:25 p.m. ET	Email from Phil Hawkins at 20050418 1606 to multiple recipients	E-mail	Philip Hawkins	Linda Collins, George Regan, Frank Varvaro	
P002011	P002011	Tue 04/19/2005 5:46:42 p.m. ET	Email from Phil Hawkins at 20050419 1746 to Karen Thomas	E-mail	Philip Hawkins	Karen Thomas	
P002012	P002012	Tue 04/19/2005 2:18:48 p.m. ET	Email from Phil Hawkins at 20050419 1418 to Linda Collins	E-mail	Philip Hawkins	Linda Collins	

## Document Index

Bates - Begin	Bates - End	Date	Full Name	Type +	Author(s)	Recipient(s)	Description
P002013	P002013	Tue 04/19/2005 10:54:10 a.m. ET	Email from Phil Hawkins at 20050419 1054 to Linda Collins	E-mail	Philip Hawkins	Linda Collins	
P002014	P002014	Tue 04/19/2005 10:32:23 a.m. ET	Email from William Lang at 20050419 1032 to Phil Hawkins	E-mail	William Lang	Philip Hawkins	
P002015	P002015	Tue 04/19/2005 9:55:36 a.m. ET	Email from Phil Hawkins at 20050419 0955 to SheridanS	E-mail	Philip Hawkins	Susan Sheridan	
P002016	P002016	Thu 04/21/2005 10:36:16 a.m. ET	Email from William Lang at 20050421 1036 to Phil Hawkins	E-mail	William Lang	Philip Hawkins	
P002017	P002017	Tue 04/19/2005 9:50:37 a.m. ET	Email from Phil Hawkins at 20050419 0950 to Frank Varvaro	E-mail	Philip Hawkins	Frank Varvaro	
P002018	P002018	Tue 04/19/2005 5:50:06 p.m. ET	Email from Phil Hawkins at 20050419 1750 to Linda Collins	E-mail	Philip Hawkins	Linda Collins	
P002019	P002019	Tue 04/19/2005 6:01:01 p.m. ET	Email from Phil Hawkins at 20050419 1750 to Gregory Poole	E-mail	Philip Hawkins	Gregory Poole	Philip Hawkins contacts attorney Gregory Poole regarding his situation re Anstar Biotech Industries and his feelings that he was fired due to his age, not his job performance.
P002020	P002020	Tue 04/19/2005 6:30:01 p.m.	Email from Phil Hawkins at 20050419 1750	E-mail	Philip Hawkins	Gregory Poole	More details in follow-up email from Philip Hawkins to Gregory Poole regarding William Lang

## Document Index

Bates - Begin	Bates - End	Date	Full Name	Type +	Author(s)	Recipient(s)	Description
**	**	ET	to Gregory Poole	**	**	**	and the loss of Philip Hawkins employment.
P002021	P002022	Wed 04/20/2005	Letter from Gregory Poole to Phil Hawkins DTD 4/20/05	Letter	Gregory Poole	Philip Hawkins	Letter from Gregory Poole to Philip Hawkins with general advice re discrimination and specific advice re contact with William Lang and other staff at Anstar Biotech Industries.
P002022	P002022	Wed 04/20/2005	Email from Gregory Poole at 20050420 1536 to Philip Hawkins	E-mail	Gregory Poole	Philip Hawkins	Email advising Philip Hawkins that letter from Gregory Poole has been mailed via regular mail.

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***Open Questions***

## Open Questions

Answer Status <> Answered (7 of 7)






Question Text	Due Date	Assigned To +	Answer	Answer Status
Where does Randy Fosheim live now?	Thu 06/04/2009	AttorneyChris		Unaddressed
How will Judge Franklin conduct voir dire?	Thu 06/04/2009	AttorneyChris		Unaddressed
How can we verify Philip Hawkins' birthday?	Thu 06/11/2009	ParalegalDave		Unaddressed
<b>What other cases has Philip Hawkins' attorney taken to trial recently? Where can we get transcripts of opening statements and closing arguments?</b>	Thu 06/11/2009	ParalegalDave		Unaddressed
Who will we use to prepare demonstrative evidence?	Mon 07/20/2009	AttorneyChris		Unaddressed
Where are Philip Hawkins' notes regarding the Hawkins Performance Review?	Mon 07/20/2009	InvestigatorFrank		Unaddressed
Did Philip Hawkins turn down a job offer that he received from Converse Chemical Labs shortly after being laid off by Anstar Biotech Industries?	Mon 07/20/2009	InvestigatorFrank		Unaddressed

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***Research Authorities***



## Research Authorities

	Name	Jurisdiction +	Type +	Citation	Description	Linked Issues	# Extracts
	Americans with Disabilities Act of 1990, 42 USCS § 12102	N/A	Statute	42 USCS § 12102 - No Signal [8/23/13]	The Americans with Disabilities Act (ADA) is a Federal civil rights law that <b>prohibits</b> the exclusion of people with disabilities from everyday activities. To meet the goals of the ADA, the law established requirements for private businesses of all sizes. These requirements first went into effect on January 26, 1992, and continue for <b>both for-profit and non-profit organizations</b> .	Wrongful Termination, Damages	3
	Bell v. Farmers Ins. Exchange, 87 Cal. App. 4th 805 (Cal. App. 1st Dist. 2001)	Cal. App. 1st Dist.	Case Law	 87 Cal. App. 4th 805 - Caution: Possible negative treatment [8/23/13]	On July 10, 2001 a California Jury gave insurance adjusters \$90 million for <b>uncompensated overtime</b> . Some 2,400 current and former Farmers Insurance Exchange adjusters more than \$90 million on their class action claims they were denied overtime pay	Retaliation	0
	Ragsdale v. Wolverine Worldwide, Inc., 218 F.3d 933 (8th Cir. Ark. 2000)	8th Cir. Ark.	Case Law	 218 F.3d 933 - Questioned: Validity questioned by citing refs. [8/23/13]	The Family and Medical Leave Act of 1993 (FMLA) guarantees <b>qualifying</b> employees 12 weeks of unpaid leave each year and encourages businesses to adopt more generous policies. Respondent Wolverine World Wide, Inc., granted petitioner Ragsdale 30 weeks of medical leave under its more generous policy in 1996. It refused her request for additional leave or permission to work part time and terminated her when she did not return to work. She filed suit, alleging that 29 CFR §	Age Discrimination, Retaliation	2

## Research Authorities

Name	Jurisdiction +	Type +	Citation	Description	Linked Issues	# Extracts
**	**	**	**	825.700(a), a Labor Department regulation, required Wolverine to grant her 12 additional weeks of leave because it had not informed her that the 30-week absence would count against her FMLA entitlement. The District Court granted Wolverine summary judgment, <b>finding that the regulation was in conflict with the statute and invalid because it required Wolverine to grant Ragsdale more than 12 weeks of FMLA-compliant leave in one year.</b> The Eighth Circuit agreed.	**	**
 Walia v. Aetna, Inc., 93 Cal. App. 4th 1213 (Cal. App. 1st Dist. 2001)	Cal. App. 1st Dist.	Case Law	 93 Cal. App. 4th 1213 - Warning: Negative treatment is indicated [8/23/13]	Aetna had merged with U.S. Healthcare which is headquartered in Pennsylvania. All <b>"key employees"</b> were asked to sign a noncompete and confidentiality agreement "that prevented them from working for a competitor in the same state for six months after termination. Anita Walia, an account manager in Aetna US Healthcare's San Francisco office, was told that she would lose her job if she didn't sign the agreement."	Damages	0
 Worker Adjustment and Retraining Notification Act, 29 USCS § 2101	N/A	Statute	29 USCS § 2101 - No Signal [8/23/13]	aka WARN. A company with <b><u>100 or more</u></b> full time employees must provide employees with <b>60 days'</b> notice of its intention to close a facility (department, division, plant, etc.) if a mass	Wrongful Termination, Pattern & Practice	0

## Research Authorities

Name	Jurisdiction +	Type +	Citation	Description	Linked Issues	# Extracts
**	**	**	**	staff reduction will last more than 6 months. Note that if this pertains to your company, you must give 60 days' notice of the staff reduction to the "chief local elected official" and to the Dislocated Worker Unit (DWU) of the state in which the layoff will occur.	**	**

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***Research Authority Extracts***

## Research Authority Extracts

Authority Name	Extract Text	Description	Criticality	Linked Issues
Americans with Disabilities Act of 1990, 42 USCS § 12102	SEC. 102. DISCRIMINATION. PART A Employment discrimination is prohibited against "qualified individuals with disabilities." This includes applicants for employment and employees. An individual is considered to have a "disability" if s/he has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Persons discriminated against because they have a known association or relationship with an individual with a disability also are protected.	The third part of the definition protects individuals who are regarded as having a substantially limiting impairment, even though they may not have such an impairment. For example, this provision would protect a qualified individual with a severe facial disfigurement from being denied employment because an employer feared the "negative reactions" of customers or co-workers.	♦	Retaliation
Americans with Disabilities Act of 1990, 42 USCS § 12102	SEC. 102. DISCRIMINATION. PART B General Rule.--No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. (b) Construction.--As used in subsection (a), the term "discriminate" includes-- (1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee; (2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an	An employer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to a disability. For example, suppose two persons apply for a job as a typist and an essential function of the job is to type 75 words per minute accurately. One applicant, an individual with a disability, who is provided with a reasonable accommodation for a typing test, types 50 words per minute; the other applicant who has	♦	Retaliation, Transfer

## Research Authority Extracts

Authority Name	Extract Text	Description	Criticality	Linked Issues
**	organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);	no disability accurately types 75 words per minute. The employer can hire the applicant with the higher typing speed, if typing speed is needed for successful performance of the job.	**	**
Americans with Disabilities Act of 1990, 42 USCS § 12102	SEC. 104. ILLEGAL USE OF DRUGS AND ALCOHOL. (a) Qualified Individual With a Disability.--For purposes of this title, the term "qualified individual with a disability" shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use. (b) Rules of Construction.--Nothing in subsection (a) shall be construed to exclude as a qualified individual with a disability an individual who-- (1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use; (2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or (3) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs. (c) Authority of Covered Entity.--A covered entity-- (1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees; (2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal	While a current illegal user of drugs is not protected by the ADA if an employer acts on the basis of such use, a person who currently uses alcohol is not automatically denied protection. An alcoholic is a person with a disability and is protected by the ADA if s/he is qualified to perform the essential functions of the job. An employer may be required to provide an accommodation to an alcoholic. However, an employer can discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct. An employer also may prohibit the use of alcohol in the workplace and can require that employees	♦	Demotion

## Research Authority Extracts

Authority Name	Extract Text	Description	Criticality	Linked Issues
**	use of drugs at the workplace; (3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (U.S.C. 701 et seq.);	not be under the influence of alcohol.	**	**
Ragsdale v. Wolverine Worldwide, Inc., 218 F.3d 933 (8th Cir. Ark. 2000)	This <b>penalty is incompatible with the FMLAs remedial mechanism</b> . To prevail under §2617, an employee must prove that the employer violated §2615 by interfering with, restraining, or denying the exercise of FMLA rights. Even then, §2617 provides no relief unless the employee has been prejudiced by the violation. In contrast, §825.700(a) establishes an irrefutable presumption that the employee's exercise of FMLA rights was restrained. There is no empirical or logical basis for this presumption, as the facts of this case demonstrate. Ragsdale has not shown that she would have taken less, or intermittent, leave had she received the required notice. In fact her physician did not clear her to work until long after her 30-week leave period had ended. Blind to the reality that she would have taken the entire 30-week absence even had Wolverine complied with the notice regulations, §825.700(a) required the company to give her 12 more weeks and rendered it liable under §2617 when it denied her request and terminated her. The regulation fundamentally alters the FMLAs cause of action by relieving employees of the burden of proving any real impairment of their rights and resulting prejudice. The Government claims that its categorical rule is easier to administer than a fact-specific inquiry, but Congress chose a remedy requiring the retrospective, case-by-case examination the Secretary now seeks to eliminate. The regulation instructs courts to ignore §2617's command that employees prove impairment of their statutory rights and resulting harm. Agencies are not authorized to contravene Congress will in this		♦	Wrongful Termination

## Research Authority Extracts

Authority Name	Extract Text	Description	Criticality	Linked Issues
**	manner.	**	**	**
Ragsdale v. Wolverine Worldwide, Inc., 218 F.3d 933 (8th Cir. Ark. 2000)	The Court further suggests that the Secretary's remedy is contrary to the statute in two other ways. First, it claims that the penalty would exceed the FMLA's guarantee of 12 weeks of leave under §2612(a)(1) and (d)(1). See ante, at 10ñ11. But nothing requires an employer to provide more than 12 weeks of leave and employer may avoid this penalty by following the regulation. The penalty the Secretary has chosen no more extends an employer's obligations under the Act than would any fine or other remedy for a violation of those obligations. Nor, as the Court notes, would a longer penalty violate this aspect of the Act. See ante, at 12. To the extent that an even lengthier penalty would be inappropriate, it would be because it is unreasonable, not because it is contrary to the Act's 12-week allotment. Moreover, providing this notice is not at all onerous. In most situations, notice will require nothing more than informing the employee of what the employer already knows: that the leave is FMLA-qualifying. The employer will eventually have to make this designation to comply with the Act's record-keeping requirements. 29 U. S. C. §2616(b). At most, the regulation moves up the time of this designation. When an employer is unsure at the time the leave begins whether it qualifies, the regulations allow an interim designation followed by later confirmation. 29 CFR §825.208(e)(2)(2001). This is hardly the "high price" of which the Court complains. See ante,at 14. Second, the Court claims that the penalty would discourage employers from voluntarily providing more leave than the FMLA requires, contrary to the Act's assertion that nothing in this Act . . . shall be construed to discourage employers from adopting or retaining [more generous] leave policies,î §2653.		♦	Wrongful Termination