

THE EMPLOYER'S LEGAL RESOURCE: HUMAN RESOURCES REP'S INFORMAL STATEMENT TO DEAF EMPLOYEE IS EVIDENCE

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A recent decision from a federal district court in Colorado allowed a deaf employee's case to proceed, despite the employee's failure to mention certain allegations in the preceding EEOC charge. In *Grady v. Swire Coca-Cola*, the deaf employee worked for Swire for approximately two years in another position before he obtained a commercial driver's license (with a hearing exemption from the Department of Transportation). Grady applied for a driver position with the company and Swire initially offered him the job, only for a human resources employee to later tell him he wouldn't be hired because management didn't want deaf people driving for them. Grady apparently trained as a driver for a few weeks before Swire transferred him back to his non-driving job. Two months later, Swire fired Grady for unrelated reasons.

Grady filed a discrimination complaint with the EEOC, alleging Swire denied him the driver position because of his disability, and he subsequently received notice of his right to sue the company in federal court. After Grady filed the lawsuit, Swire moved to dismiss.

At the motion to dismiss hearing, Grady admitted the human resources rep was not necessarily speaking in an official capacity when she made such statement. Rather, Grady felt that she had been his ally and was simply sharing inside information with him about why he had been denied the driver position. Nevertheless, it is now evidence in the federal lawsuit.

This case serves as a good reminder to employers about the practicalities of the workplace and decisions about personnel. As indicated in *Grady*, even informal or friendly statements made by a human resources representative are sufficient to bind the employer in various circumstances. Employers should make sure that any human resources or supervisory employees are properly trained including as to the power of their words, regardless of the context. Even when you have an HR representative who goes off script or engages in friendly conversations with coworkers, the employer may still be held accountable in subsequent legal proceedings for what that employee said.

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