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Play It Safe II: Employers At Risk If They Don't Methodically Process ADA Issues

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Just a few days ago, Pete Tschanz wrote about a court decision where it seemed from the court's decision that the employer moved to terminate an employee without really working through some employee health issues as required by the ADA. Just to echo that theme with another new decision, we offer the case of *Spurling v. C&M Fine Pack, Inc.*, where the 7th Circuit U.S. Court of Appeals reversed a lower court's summary decision in favor of the employer. In short, the timeline in *Spurling* was at follows:

- April 15, 2010 – Employee receives final warning for sleeping at work.
- April 21 – Company received doctor's note indicating that employee may have disability and needed further testing.
- April 28 – Employee was terminated.

That timing will rarely work for an employer, regardless of various factors that may make a termination seem like the appropriate step. (For example, why didn't the employee here go to the doctor before the final warning when she had received other disciplines?)

That doesn't mean the employer cannot terminate an employee who cannot

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do the job. Rather, it just means that, to position itself to successfully defend a lawsuit, the employer needs to expend a certain amount of effort communicating with the employee and/or medical practitioners to establish that fact. Employers, it is very hard to win these cases if the timing looks in any way like a “gotcha.” I believe that jumping the gun on terminating employees with health issues may be the most common mistake that employers make. A small investment in your employment lawyer when you get that doctor’s note or other indication of a *possible* disability will save you time, money, and energy in the long run.