

A Very Unhappy Birthday: Lessons on Employee Anxiety

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A Kentucky jury recently awarded Kevin Berling \$450,000 for disability discrimination because his employer ignored his request *not* to celebrate his birthday and subsequently terminated his employment.

Like many employers, Gravity Diagnostics, LLC (“Gravity”) regularly celebrated employees’ birthdays. In 2019, Gravity employee Kevin Berling submitted a request to the company’s chief of staff that his birthday not be celebrated due to “bad memories” surrounding his parents’ divorce, which he associated with his birthday. The chief of staff assured Mr. Berling that she would pass on the request. Gravity later claimed that Mr. Berling did not indicate that a celebration would trigger a panic attack or that his request not to celebrate his birthday was related to an anxiety disorder. While Mr. Berling’s complaint alleged that he informed Gravity of his anxiety disorder in connection with his request to forego his birthday celebration, Mr. Berling testified at his deposition that he never explicitly informed Gravity of his disorder. He also testified that he had told Gravity he saw a therapist on a weekly basis.

Mr. Berling claimed he had bad memories because his parents announced their divorce on his seventeenth birthday in 2009. Shortly thereafter, Mr. Berling was diagnosed with an anxiety disorder, which caused one or two panic attacks lasting 1-2 minutes each year. During these panic attacks, Mr. Berling exhibited symptoms such as crying, shaking, and hyperventilating. As a coping mechanism for these attacks, Mr. Berling was advised to clench his fists and open and shut his eyes.

The day of Mr. Berling’s birthday, several coworkers wished him a happy birthday. Mr. Berling stated that these greetings put him “on edge,” but according to Gravity, Mr. Berling was still able to continue his duties. At lunch, Mr. Berling went to the breakroom where he encountered a birthday banner and was again wished a happy birthday by his coworkers. Instead of staying for the celebration, Mr. Berling grabbed his lunch out of the refrigerator and retreated to his car for 45 minutes where he experienced a

panic attack. He eventually returned to work, and notified the chief of staff via email that he was “a little upset that there were birthday things around.” But, he did not disclose the fact he had a panic attack. The rest of the day, Mr. Berling acted somberly and was not his usual self.

The following day, Mr. Berling requested to meet with the chief of staff. She was unavailable, so Mr. Berling instead met with his supervisor and Gravity’s director of business operations. Before the meeting, the chief of staff informed Mr. Berling’s supervisor that she had forgotten to pass on Mr. Berling’s request not to celebrate his birthday. During the meeting, Mr. Berling explained that he was upset his birthday had been celebrated and that he had experienced a panic attack as a result. Mr. Berling testified that his supervisor criticized his reaction and accused him of “stealing other coworkers’ joy.” Mr. Berling then began having another panic attack where he became very red, clenched his fists, and closed his eyes. Gravity’s director of business operations and Mr. Berling’s supervisor were unaware of Mr. Berling’s coping mechanisms and asked what was wrong. They said that Mr. Berling responded by “command[ing] silence while shaking.” Both Gravity employees said they believed that Mr. Berling was going to attack them. One said she would have called the police if she would have had access to her cellphone. Mr. Berling was thereafter escorted out of the building, forced to turn in his building access key, and then ordered to return to work the next Monday. Gravity then notified security that Mr. Berling was banned from the building.

Afterwards, Gravity’s chief operating officer was informed of Mr. Berling’s actions during the meeting and that Mr. Berling’s supervisor and the director of business operations had felt physically threatened and unsafe. As a result of this report, the chief operating officer decided to terminate Mr. Berling’s employment for violation of Gravity’s workplace violence policy. Notably, Mr. Berling had never exhibited violent behavior and had no disciplinary reports in his personnel file. In fact, he often asked for additional work.

At trial, the jury unanimously decided that Mr. Berling had a disability and that he was fired because of that disability. It awarded him a total of \$450,000. Gravity has appealed.

Regardless of the outcome of the appeal, this case serves as an important reminder for employers that potential mental health conditions should be taken seriously and may require accommodations. Employers should train management to recognize and appropriately address requests implicating mental health conditions, even when employees do not explicitly disclose a particular disorder. Below are guidelines employers should follow to hopefully avoid situations similar to this one.

- Follow through. Gravity’s chief of staff told Mr. Berling that she would pass along his request, but she failed to do so.
- Provide appropriate training so that managers are prepared to recognize potential mental health issues.
 - While there was a fact issue at trial whether Mr. Berling notified Gravity that his request was related to a mental health condition, he had made it widely known that he was engaged in regular therapy and he told Gravity’s chief of staff that he had bad memories of his birthday related to his parents’ divorce announcement. Ideally, his request should have been passed on to human resources or a disability accommodations team.
 - In the meeting that led to the termination of his employment, Mr. Berling told company representatives that he had experienced a panic attack the previous day. Had his colleagues been trained to recognize distinctions between anxiety responses and threats of violence, it seems unlikely the meeting would have resulted in the

fear that led to termination of his employment.

- Carefully consider employee requests, even if they are unusual or confusing.
 - While not perfectly clear, Mr. Berling's request warranted further inquiry. Had Gravity explored the reason for the request, it could have learned more specifics that would have more directly indicated the need to consider the request as one for a disability accommodation.
 - Even requests that do not legally require accommodation should be carefully considered before a company rejects them, particularly when they involve social or team-building events designed to enhance morale. By ignoring Mr. Berling's discomfort with birthday celebrations, Gravity negatively impacted not only Mr. Berling's employment experience but also the coworkers he encountered on his birthday and those involved in the meeting that led to termination of his employment. Berling's supervisor exacerbated this issue by blaming Mr. Berling for his colleagues' discomfort.
- Consider the circumstances. When an employee engages in behavior that is highly unusual or uncharacteristic, employers should analyze the totality of the circumstances to determine if there is an underlying issue that might be connected to a disability before engaging in adverse employment actions. Had Gravity investigated the reason for Mr. Berling's seemingly-bizarre response in the meeting, it could have learned how panic attacks manifested for Mr. Berling specifically and then planned appropriately going forward rather than disciplining him unnecessarily.