

Hold Your Horses: A Plaintiff's Long Rap Sheet Might Not Get You To The Finish Line

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With each case, employers defending discrimination claims know at least these three things: litigation can be expensive, litigation is time-consuming, and the outcome is never a sure thing. Still, every once in a while, information is revealed that makes the case more thrilling, and little is more exciting than discovering a plaintiff's criminal past, such as an ADA plaintiff who illegally sold prescription pain medications and also may have engaged in shoplifting. Sounds like great evidence that should torpedo the plaintiff's claims, right? Not so fast. Late last week, a trial court in the Middle District of Louisiana (*Ariza v. Loomis Armored US, LLC*, No. 3:13-00419) considered this question and weighed the benefits against the burdens of a plaintiff's criminal past. The judge said no. The court explained, "Whatever the legality and reality of Plaintiff's 'bad acts,' not one bears on whether or not she suffered cognizable and illegal discrimination when terminated; that she may have sold her pills or stolen a dress matters not a bit if she can prove her ADA case." In other words, the plaintiff's criminal past did not affect whether or not the defendant discriminated against her during her employment. "Wait!" the employer argued. "It IS something that should be considered because it affects the former employee's credibility and suggests she would make false claims for financial gain." The court, however, shot down this argument, too, saying that although a plaintiff's credibility is a valid issue, the rules on impeaching a witness for prior criminal conduct (conviction of a felony or a crime involving dishonesty) are very strict and did not apply. Although the Louisiana Court's decision to exclude the criminal history might appear disappointing, remember that such evidence cuts both ways. Supervisors, managers and decision-makers also can have checkered pasts. So, if a court allows a plaintiff's criminal history to come into evidence at trial, it might also allow similar evidence against the employer's own witnesses. As a result, employers thinking about using an employee's ugly history should (1) remember that the evidence ultimately may not be admissible and (2) confirm that their own witnesses do not have similar problems.

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