

# HR TIP

## OF THE WEEK



**TOPIC:** ADA/disability/accommodations/misconduct/discipline



**LEGAL DEVELOPMENT:** Let's start this tip with a line from a new case: **“When an employee is about to be fired for misconduct, she cannot save her job by belatedly telling her employer about a disability or medical need.”** This line is from a Third Circuit case decided in July. The employer received a report of misconduct (here, sleeping on the job). During the employer's investigation, the employee disclosed she suffered from diabetes and that her medication fatigued her. When the employer proceeded to terminate the employee for sleeping on her shift, the employee sued. The employer won this one, because it did not know (and had no reason to know) of the medical condition prior to the employee's misconduct, and because the employee had not asked for an accommodation before violating a work rule.



**HR TIP:** What's important here is that the employer had no reason to know of the employee's medical condition (the medical condition was not obvious nor previously disclosed). Those facts are critical and made the termination unassailable. The employer take-away from the case is the importance of strong documentation to establish timing (here, when the condition was disclosed) and the thorough investigation of misconduct reports. Ensure that your HR has note-taking and investigation processes in place – upholding discipline depends on it.



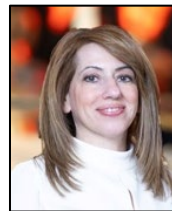
**Brigette N. Eagan, Esq.**

973-535-7114

[beagan@genovaburns.com](mailto:beagan@genovaburns.com)

### ABOUT ME

I work with HR and legal on the types of workplace issues that make you do a double take. I've been counseling employers and tackling their employment issues for two decades and going strong. I'm a Partner at Genova Burns and Chair of the Human Resources, Law and Compliance Practice Group.



*We hope that you find this Tip helpful. However, this Tip is not legal advice.*