

## CUT AND PASTE POST NOVEMBER, 2018

### Employer Not Aware of Need for Accommodation

There's a new Montana Supreme Court decision that's worth a read. The case is *C. Jackson v. Costco Wholesale Corporation*. Here's a really brief case description.

Jackson began his employment with Costco in its Missoula warehouse store in 1997. Throughout the course of his employment, Jackson requested various accommodations due to prescribed medication causing sleep interference, and Costco granted him intermittent Family Medical Leave Act (FMLA) leave and excused tardiness.

Costco personnel policy requires employees to notify of Costco of any accommodation needs. Other than the need for accommodations described above, Jackson requested no accommodations.

On 10/31/2015, Jackson was observed wearing a ball cap, which was a violation of Costco policy. When informed of the violation, he put on a different hat. When his supervisor tried to speak with him about the policy, he became angry, yelled at her, refused to sit down, and used profanity. She brought in another manager, who was able to calm Jackson down. Jackson was assigned to spend the rest of the shift moving carts in parking lot.

It is Costco policy that no employee employed greater than 5 years can be terminated until upper management review. Jackson was placed on unpaid leave pending this review. A termination hearing was scheduled for November 8<sup>th</sup>.

At the outset of this meeting, Jackson apologized for his behavior during the October 31 meetings and said his conduct was due to depression and anxiety disorders. This was the first time Costco was made aware of these issues. At this meeting, Jackson was advised that he was being terminated for insubordination.

After the November 8<sup>th</sup> meeting, Jackson provided Costco with a letter from his psychiatrist stating that, when Jackson didn't take his medications, it resulted in a "mental health decompensation". The letter went on to say that, if he was compliant with medications, "the likelihood of future confrontations and decompensation is be [sic] small".

On November 12, 2015 the parties met to sign a termination notice. Later, Jackson filed a complaint of discrimination based on disability with the Montana Human Rights Commission.

A Human Rights Hearing Officer made a finding of no reasonable cause. Jackson appealed to District Court, which found no discrimination, and to the Supreme Court, which agreed with the District Court. The reason for these united decisions? Costco was unaware of the disability until after a termination decision was made.

**Professional Pointer:** If it's been a while since you reviewed your responsibilities under the ADA or Montana law, this case is a great refresher. Again, the case is *C. Jackson v Costco Wholesale Corporation*. 2018 MT 262. Decision Date: 10/30/2018 Find

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the case by going to [this link](#) and selecting the ‘Recent Decisions, past 30 days’ option, or by using the ‘Party Name’ option if it’s been more than 30 days.

## IRS Posts Online Withholding Calculator

The Internal Revenue Service (IRS) has posted a new Withholding Calculator for the W-4 form, and is encouraging everyone to use the new Calculator to perform a quick ‘paycheck checkup.’ According to the IRS, this is important this year because of recent changes to the tax law for 2018.

Here are a couple reasons for employees to do a check up on the amount of taxes to be withheld:

- Checking the amount of withholding can help protect against having too little tax withheld and facing an unexpected tax bill or penalty at tax time next year.
- With the average refund topping \$2,800, employees may prefer to have less tax withheld up front and receive more in their paychecks.

The Calculator can be found at <https://apps.irs.gov/app/withholdingcalculator/>

## Top 10 Safety Violations

Under the Occupational Safety and Health Act (OSHA), employers must provide a safe workplace for their employees. Last week, OSHA released a preliminary list of its top 10 cited Safety Standards for fiscal year 2018. Most of the citations were issued at construction sites, because those are the worksites most frequently inspected by OSHA. While the list does not vary much from year to year, there was one newcomer – eye and face protection. The preliminary top 10 violations are:

1. Fall Protection Hazard Communication
2. Scaffolding
3. Respiratory Protection
4. Lockout/Tagout
5. Ladders
6. Powered Industrial Trucks
7. Fall Protection – Training Requirement
8. Machine Guarding
9. Eye and Face Protection



OSHA publishes this list to help employers find and fix recognized hazards before preventable injuries and illnesses occur, or before OSHA shows up.

**Professional Pointer:** Now is a good time to take a look at your safety program to ensure compliance with the OSHA Standards and with the Montana Safety Culture Act, and to review 2018 injuries, accidents, and near misses to prevent future occurrences. This [link](#) will take you to the final Top 10 List, and to the specific OSHA Standards cited above.



Happy Thanksgiving from your GVHRA Board!