
**CROWE
&
DUNLEVY**
ATTORNEYS AND
COUNSELORS AT LAW

**The Crowe & Dunlevy
Gameshow - Back from
the Dead, and Ready to
Party!**


Presented by: Adam W. Childers

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Member
LexMundi
World Ready


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Adam W. Childers



- President and CEO of Crowe & Dunlevy.
- Chair of the Labor & Employment Practice Group
- Trial lawyer and litigator in the firm’s Oklahoma City office.
- *Subsequent information should not be understood as, or considered a substitute for, specific legal advice. For inquiries, please contact Adam W. Childers, or another licensed attorney.

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Question No. 1:

Employee is a rural mail carrier. He is an evangelical Christian and observes Sunday Sabbath. So, his religion requires him to rest and worship on a Sunday instead of working. Amazon contracted with the employer to deliver packages including Sunday delivery. Employee informed employer of inability to work on Sundays. Employer accommodates his request as long as he covered other shifts during the week. Later, a Memorandum of Understanding (MOU) only allowed the exemption of work on Sunday on two conditions; (1) if the person had applied for leave on that day, and, (2) if the person would have exceeded the limit of 40 hours of work that week on Sunday.

The employer again moved to accommodate employee by transferring him to a smaller station that did not fulfill Amazon deliveries. However, the new location also began Sunday Amazon deliveries. Employer offered to allow employee to pray on Sunday morning before returning to work later in the day, but he declined the offer. Another employee volunteered to take over his shifts on Sunday, but that worker fell ill, leaving the rest of the burden on other employees.

Employee continued to be absent from his scheduled work on Sundays and received disciplinary action. Employee filed a complaint and asked employer to transfer him to a job that did not require him to work on Sundays. This complaint and transfer request was promptly denied as no available positions with such an exemption.

Employee eventually resigned and sued for two reasons, alleging he was "disparate(ly) treat(ed)" due to his religion and for failure to accommodate his sincerely-held religious beliefs.

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I DON'T ROLL



ON SHABBOS!

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Question No. 2:

Nine female detention officers had their schedules affected by a policy change. It used to be based on seniority. However, it was changed so that only male officers could take time off on the weekend, while female officers could only take time off during the week and only one weekend day per month.

The reason provided by the employer was safety. It would be unsafe to have more of the men off during the week, and safer to have them off on weekends.

The scheduling change did not impact salary, seniority, promotions, hiring, granting leave, or any other tangible facet of employment.

Although gender-motivated, motion to dismiss was filed because it was not an “ultimate adverse employment action.”

Viable claims?

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Question No. 3:

Energy employee is paid a “daily rate” as his compensation. The rate is \$963 per day, guarantee, and he makes more than 200K annually based on that daily rate. The rate stays the same no matter how many hours he works. He is treated as exempt under the FLSA.

After he is terminated, he brings a claim under the FLSA claiming unpaid overtime. The employer defended relying on the “highly compensated employee” FLSA exemption arguing: (1) the employee was guaranteed at least \$963 if he worked any amount of time in one day during the workweek, which serves the same purpose as the minimum guarantee provided by a weekly salary; and (2) the minimum guarantee of \$963 is more than enough to meet the \$684 weekly amount (and the prior weekly minimum of \$455) required under the FLSA.

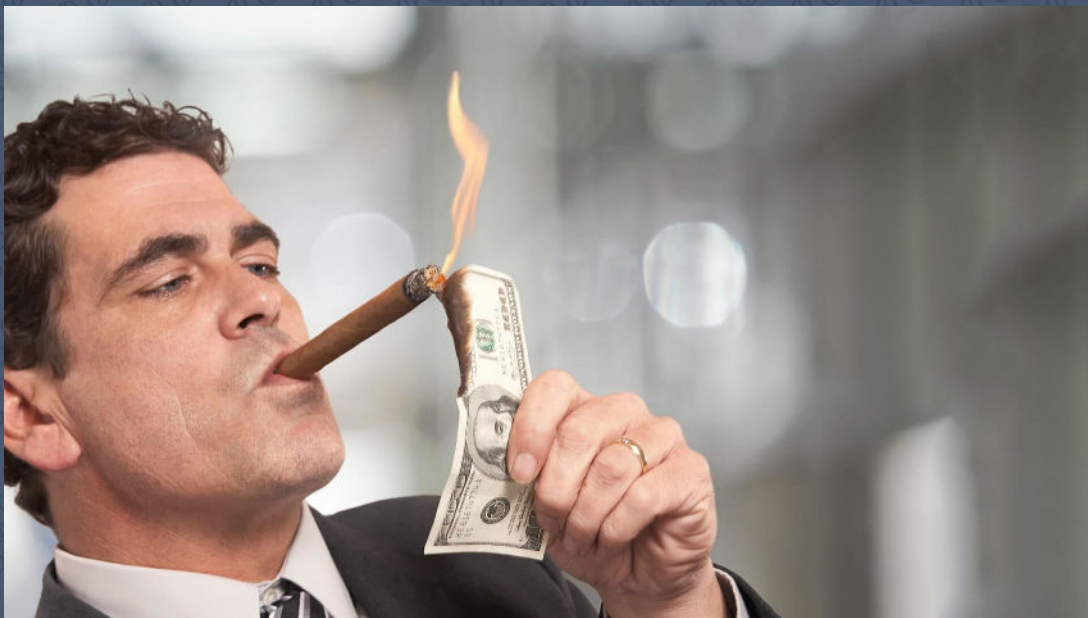
Fight boiled down to what is a “salary” and does a minimum daily guarantee satisfy that definition?

Sooooo..... who wins? Employer or employee?

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Question No. 4:

Blind individual who is also in a wheelchair lives in Florida. She admittedly has no intention of vacationing in the New England area but nonetheless sues a lodge in Maine over “frustration and humiliation” suffered because online reservation portals don’t allow her to determine if she will be able to take advantage of necessary accommodations.

She never calls the lodge to discuss the situation and never attempts to book a stay. She sues under the Americans With Disabilities Act Title III public accommodation provision.

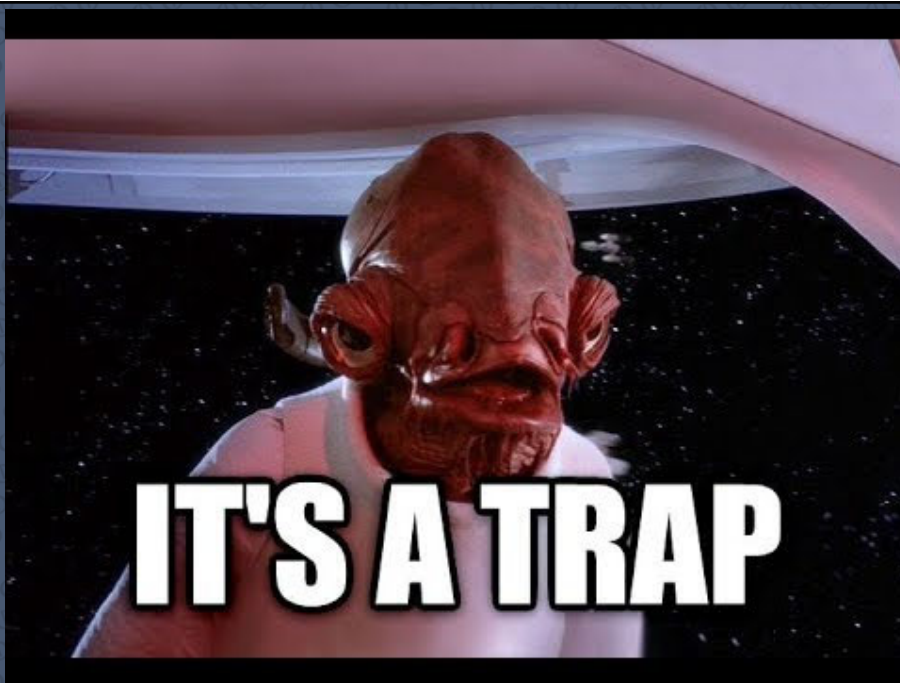
Turns out she has done this hundreds of times as a “tester,” filing most often against bed-and-breakfast locations that often are not up to ADA code.

If this plaintiff never visited in-person, and in fact never had any intention of doing so, does she have “standing” to bring the lawsuit?

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DON'T BE AFRAID OF THE GHOSTS AND GHOULS LURKING IN THE INKY DARKNESS OF EMPLOYMENT LAW!

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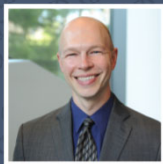


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Because this L&E Team (a/k/a “Adam’s Family”) is Here to Help!



Jaycee Booth



Michael W. Bowling



Randall J. Snapp



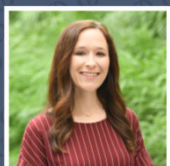
Adam W. Childers



Katie Campbell



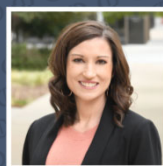
Evan Way



Taren Black



Allen L. Hutson



Renee Mangham



Madalene A.B.
Witterholt





Michael R.
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