

Can Last Chance Agreements and the Duty to Accommodate Live Side-by-side?

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A last chance agreement is an arrangement entered into between an employer, an employee with serious and persistent behavioral problems and, where applicable, the union, that gives the employee a final chance. Such an agreement imposes strict conditions to be met by the employee in order to maintain the employment relationship and may even provide that a breach of its terms will result in dismissal. There is more and more case law on this issue and last chance agreements are increasingly being used as a management tool in problematic situations.

The case law and doctrine on last chance agreements provide us with certain guidelines. Firstly, they cannot be applied automatically to employees suffering from a handicap as that term is defined by the courts. The employer must always make reasonable efforts to accommodate the employee before applying the last chance agreement and imposing the stipulated consequences for non-compliance on the employee. Moreover, such agreements must be drafted in clear and detailed terms so that a contravention thereof is readily identifiable. In short, while last chance agreements are a valuable tool for settling disputes, enforcing compliance with such agreements may be difficult.