

**Attack of One Does Not Rule All:**  
**Case Summary of *Curley v. City of North Las Vegas*<sup>1</sup>**  
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On December 2, 2014, the Ninth Circuit affirmed summary judgment in favor of a city employer who terminated a hearing-impaired employee on several performance and misconduct grounds despite a doctor's confirmation the employee was fit for duty.

Appellant Michael Curley was a pretreatment inspector for the City of North Las Vegas. He had a history of discipline, including threats against co-workers. He had requested to be relieved from duties that required him from being near to a specific type of truck based on his claim that the noise from the truck was impacting his hearing. The request was rejected because such work was essential to his position. The City suggested Curley use dual hearing protection. When a dispute arose between Curley and coworker after the coworker asked Curley to remove his hearing protection to discuss a work-related task, the City conducted an internal investigation.

The internal investigation revealed Curley had repeatedly threatened his coworkers and their families. For example, he threatened to place a bomb under a car, kick a colleague's teeth out if he did not join the union, and shoot his supervisor's children in the kneecaps. The investigation further revealed Curley conducted personal business and performed tasks for his side ADA consulting business while on City time. The City required Curley to submit to a fitness-for-duty evaluation to determine whether he was a threat to his coworkers. The evaluating doctor concluded Curley was not a danger to others and could return to work. Nonetheless, the City decided to terminate his employment and identified four reasons for its decision: (1) nonperformance of duties due to excessive phone calls, (2) intimidation of coworkers by threats of violence, (3) conducting and soliciting personal business on work time, and (4) making disparaging remarks about his supervisors and the City.

Curley alleged he was fired because of his hearing impairment and in retaliation for requesting accommodations and filing an EEOC complaint. However, in opposition to the City's motion for summary judgment, Curley attacked only one of the City's proffered reasons for termination: his threats of violence against others. He argued such reason was a pretext because he had been deemed fit for duty. The Court rejected the argument because his past threats were a legitimate basis to terminate him regardless of the doctor's determination that he did not pose a future threat of safety. Moreover, *even if* the fitness-for-duty evaluation somehow undermined the City's concern about coworker threats, Curley had not refuted the other three stated reasons for his termination. The Court stated, "***Disputing only one of several well-supported, independently sufficient reasons for termination is generally not enough to defeat summary judgment.***" (emphasis added).<sup>2</sup>

**Key takeaway:** identify all supported and independently sufficient reasons for an employee's termination. Even if the employee may be able to raise an issue as to one reason, inability to attack all legitimate bases for termination is generally insufficient to defeat summary judgment. Please feel free to contact us for assistance or consultation regarding any employee discipline or termination issues.

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<sup>1</sup> U.S. Court of Appeals for the Ninth Circuit No. 12-16228 (Dec. 2, 2014); Panel: Mary M. Schroeder, John B. Owens, and Michelle T. Friedland; Opinion by Judge Friedland.

<sup>2</sup> As to his retaliation claim, the Court rejected the argument that the City's failure to terminate him for misconduct earlier created an inference of pretext in light of new information revealed during the investigation. Additionally, despite the fact he was terminated within two months of filing an EEOC complaint, the new information revealed by the City's investigation defeated any causal inference from the temporal proximity of the EEOC complaint and his termination.