



Employers Must Tread Lightly Around a Worker's State of Mind

By Jeffrey W. Larroca, JD

The Americans with Disabilities Act (ADA) and related state and local laws require that employers reasonably accommodate qualified individuals with disabilities. The requirements appear straightforward. If an employee has breast cancer, the laws require employers to modify the employee's schedule to allow for chemotherapy treatments. If an employee is paralyzed, the laws dictate that the workplace be retrofitted for accessibility.

But what if an employee's disability is psychological? Is an employer required to accommodate someone with, for example, schizophrenia? If so, to what lengths must an employer go to do that?

The potential breadth of employer responsibilities can be found in guidance provided by the Equal Employment Opportunity Commission (EEOC) on the issue of psychiatric disabilities. Released in 1997, the EEOC guidelines provide questions and answers for employers faced with various issues.

In one portion, the EEOC guidelines clarify that an employer can discipline an individual with a disability for violating a workplace conduct standard if the misconduct resulted from a disability "provided that the workplace conduct standard is job-related for the position in question and is consistent with business necessity. For example, nothing in the ADA prevents an

employer from maintaining a workplace free of violence or threats of violence, or from disciplining an employee who steals or destroys property."

So far, so good. But the guidelines go on to say that "other conduct standards, however, may not be job-related for the position in question and consistent with business necessity. If they are not, imposing discipline under them could violate the ADA."

For example, say an employee with a psychiatric disability works in a warehouse loading boxes onto pallets for shipment. He has no customer contact and does not come into regular contact with other employees. Over the course of several weeks, he has come to work appearing increasingly disheveled. His clothes are ill-fitting and often have tears in them. He also has become increasingly anti-social. Coworkers have complained that when they try to engage him in casual conversation, he walks away or gives a curt reply. When he has to talk to a coworker, he is abrupt and rude. His work, however, has not suffered.

"The employer's company handbook states that employees should have a neat appearance at all times," the EEOC example continues. "The handbook also states that employees should be courteous to each other. When told that he is being disciplined for his appearance and treatment of coworkers, the employee explains

that his appearance and demeanor have deteriorated because of his disability, which was exacerbated during this time period. The dress code and coworker courtesy rules are not job-related for the position in question and consistent with business necessity because this employee has no customer contact and does not come into regular contact with other employees. Therefore, rigid application of these rules to this employee would violate the ADA."

In other words, if you have someone working on the loading dock or in a restricted area with little contact with co-workers, in the view of the EEOC, you may be violating the ADA if you discipline that employee for wearing the same clothes for a week, or for being nasty to co-workers when they are forced to interact.

The guidelines also stipulate that an employer must make "reasonable accommodation for an individual with a disability who violated a conduct rule that is job-related for the position in question and consistent with business necessity ... barring undue hardship."

"Because reasonable accommodation is always prospective, ... an employer is not required to excuse past misconduct," the guidelines say. The example given is of a reference librarian who frequently loses her temper at work and disrupts the library atmosphere by shouting at patrons and coworkers.

“After receiving a suspension as the second step in uniform, progressive discipline, [the librarian] discloses her disability, states that it causes her behavior, and requests a leave of absence for treatment. The employer may discipline her because she violated a conduct standard—a rule prohibiting disruptive behavior towards patrons and coworkers—that is job-related for the position in question and consistent with business necessity. The employer, however, must grant her request for a leave of absence as a reasonable accommodation, barring undue hardship, to enable her to meet this conduct standard in the future.”

The lesson here is that employee behavior that would have resulted in immediate discipline or even termination must now give way to inquiry. The employer has to ask: What do we know about this employee’s medical condition?

Then, when information reveals a potential disability, the employer may have to offer accommodations that may help alleviate the psychiatric condition and allow the employee to work or, as in the case of the cordoned-off employee, even waive basic rules about hygiene or courtesy.

Even more challenging, employee behavior might be so clearly the result of a psychiatric disability that the employer “will be deemed to have constructive knowledge of that disability no matter what the employee reveals,” the guidelines state. Employers must keep this in mind when employees exhibit behavior that may warrant further inquiry before discipline or termination, or when they witness signs or hallmarks of a mental issue in conjunction with work performance problems.

There are limitations. Employers are not required to accommodate

employees who pose a direct threat to themselves or others; certain psychiatric conditions, such as kleptomania, pyromania, compulsive gambling, and exhibitionism, are not recognized by the ADA; and the employer can use the defense that accommodating a certain psychiatric disability will create an undue hardship on its operations.

Nonetheless, employers must be vigilant. If an employee tells them “take this job and shove it,” that may not be the last word. ●

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