Mental Illness & the Americans with Disabilities Act: What All Employees and Applicants Need to Know

NAMI Illinois

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Equip for Equality
Training Outline

Focus on issues relevant to mental illness

• Anti-Discrimination Laws
• ADA Amendments Act: Definition of Disability
• Disclosure, Medical Exams and Inquiries
• Confidentiality
• Reasonable Accommodations
• Harassment
• Resources
• Questions
Definition of Disability: Legal Update
An employee is protected under the ADA if he or she meets one of the following prongs:

• He or she has a physical or mental impairment that causes a substantial limitation of one or more major life activities
• He or she has a record of such an impairment
• He or she is “regarded as” having an impairment

OR he or she has a relationship with someone with a disability (association discrimination)
The purpose of the ADA Amendments Act is to:

• Reject the reasoning of court decisions that narrowed the definition of disability

• Emphasize that the focus in ADA cases is whether entities covered by the ADA have complied with their obligations

Rules of Construction:

• The definition of disability “shall be construed in favor of broad coverage … to the maximum extent permitted by the terms of this Act.” 42 U.S.C. § 12102(4)(A)
Definition of Disability: Expanded List of Major Life Activities

- *caring for oneself
- standing
- bending
- seeing
- learning
- eating
- speaking
- sleeping
- performing manual tasks
- *interacting with others
- walking
- lifting
- reaching
- hearing
- *concentrating
- *communicating
- *thinking
- breathing
- working
- sitting

This list is not exhaustive

*Activities commonly impacted by mental illness
New Major Life Activities Category: Major Bodily Functions

<table>
<thead>
<tr>
<th>immune system</th>
<th>neurological</th>
<th>special sense organs &amp; skin</th>
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<tr>
<td>normal cell growth</td>
<td><em>brain</em></td>
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<td>endocrine</td>
<td>lymphatic</td>
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<tr>
<td>reproductive functions</td>
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<td>musculoskeletal</td>
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*Function most commonly impacted by mental illness*
ADAAA: Important Changes

**Conditions that are episodic or in remission:** An impairment that is episodic or in remission is a disability if it substantially limits a major life activity when active

- **Examples:** Bipolar disorder, PTSD

**Mitigating measures:** Ameliorative effectives of mitigating measures must be disregarded

- **Examples:** Medication, Coping Strategies
EEOC List of Impairments That Should Easily Be Found To Be Substantially Limiting

- Deafness
- Blindness
- Mobility impairments requiring wheelchair
- Intellectual disability
- Partially or completely missing limbs
- Autism
- Cancer
- Cerebral palsy
- Diabetes
- Epilepsy
- Human Immunodeficiency Virus (HIV) Infection
- Multiple Sclerosis
- Muscular Dystrophy
- Major Depressive Disorder
- Bipolar Disorder
- Posttraumatic Stress Disorder
- Obsessive Compulsive Disorder
- Schizophrenia

29 C.F.R. § 1630.2(j)(3)(iii)
Recent Case Law: ADAAA

*Kinney v. Century Services Corp., Simmons*
2011 WL 3476569 (S.D. Ind. Aug. 9, 2011)

- Employee had “isolated bouts” of depression
- Employee requested leave for in-patient treatment
- Supervisor told employee that she was “overreacting” and that “people get sad all the time – why do you need to go somewhere for it?”
- Terminated employee when she tried to return from leave
You Be The Judge: Kinney case

Does the employee have a disability under the ADA?

• Before the ADA Amendments Act?
• After the ADA Amendments Act?
Recent Case Law: *Kinney*

- **Court:** Question of fact whether employee had a disability – employee’s case can move forward
- Rejected employer’s claim that “isolated bouts” with depression did not constitute an ADA disability
- Under ADAAA, an impairment that is “episodic or intermittent” can be a disability if it substantially limits a major life activity when active
Title I of the ADA: Workplace Protections

Discrimination is prohibited in any facet of employment, including:

- Job application procedures
- Hiring / Firing
- Benefits and Compensation
- Advancement
- Training
- Any terms, conditions, or privileges of employment
- Refusing to provide reasonable accommodations
- Certain medical exams and inquiries
Disclosure, Medical Examinations and Inquiries
Question: Am I required to disclose my disability?
Disclosing a Disability

Answer:
No – you are not required to disclose your disability unless you decide to request a reasonable accommodation.
Disclosing a Disability

Question:
Should you disclose your disability?
A. It depends on personal situation

• Generally, disclosure is discouraged at the application/interview stage, unless you need an accommodation for the application/interview or are applying to work with a known disability-friendly employer

• Once you are hired, you are not legally required to disclose a disability to your employer unless you decide to request a reasonable accommodation

• Of course, there may be reasons to do so
Three Stages of Employment: Three Different Rules

1. Pre-Employment: Application and Interview

2. After a Conditional Job Offer Has Been Extended

3. Current Employees
Stage 1: Pre-Employment – Application and Interview

• Employers cannot:
  - Request any disability-related information
  - Give any medical examinations
  - Ask questions that may elicit disability-related information is prohibited (ex: “Have you had to take a lot of sick time at a former job?”)

• Employers can:
  - Ask about ability to perform specific job functions
  - Ask applicant to describe/demonstrate how he or she would perform specific functions
Stage 2: After Receiving Conditional Job Offer

• Employers can:
  - Ask disability-related questions and require a medical exam IF this is done uniformly for all applicants

• Employers cannot:
  - Withdraw a job offer unless the disability prevents performing the essential job functions and a reasonable accommodation cannot be provided
Stage 3: Current Employees

• Employers can:
  ❖ Seek disability-related information when it is job-related and consistent with business necessity
  ❖ In other words, when there is a **reasonable basis** to believe that the employee:
    • Is **unqualified** to do the job
    • Needs a **reasonable accommodation**
    • Poses a **direct threat** to the health or safety of the employee or others
When are Fitness for Duty Tests Reasonable?

**Thomas v. Corwin**
483 F.3d 516 (8th Cir. 2007)

- Juvenile police officer visited ER for an anxiety attack related to workplace stress and anxiety
- Required to undergo a medical exam
- Court: FFD test was reasonable because it was job related and consistent with business necessity
- Officer interacted with parents or guardians of troubled children, assisted detectives, and served as back-up security
- Employer had reason to doubt capacity to return to unchanged work environment; reliable attendance; perform job
- Court emphasized narrow nature of FFD evaluation
Direct Threat

• **Direct threat**: A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.

• Requires an “individualized assessment…”

• Must be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence.

29 C.F.R. §1630.2(r)
Direct Threat

_Hatzakos v. Acme American Refrigeration, Inc._
2007 WL 2020182 (E.D.N.Y. Jul. 6, 2007)

• Employer requested a medical review when employee with mental illness frequently missed work due to depression
• Disclosed depression in response to a manager’s question
• Employer terminated employee
• Employer’s defense = Employee posed a direct threat because his doctor could not “guarantee” that no threat existed
• Court: Employer did not prove direct threat – no info about nature or imminence of risk
Are Personality Tests Medical Exams?

**Karraker v. Rent-A-Center, 411 F.3d 831 (7th Cir. 2005)**

- Employer required applicants to take MMPI
- Issue: Is the MMPI a medical examination?
- Sample questions:
  - I see things or animals or people around me that others do not see.
  - I commonly hear voices without knowing where they are coming from.
  - At times I have fits of laughing and crying that I cannot control.
- **Court**: “MMPI is best categorized as a medical examination.”
- **Designed** to diagnose mental illness.
  - Even if vocational, not a medical, scale is used.
  - “Likely had the effect of excluding” people with mental illness.
What About Drug Tests?

• **General Rule:** Drug tests are not medical examinations.

• But, employers cannot use “qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability…, unless the… criteria… is shown to be job-related for the position in question and is consistent with business necessity.” *42 U.S.C. § 12112(b)(6)*

• Employer must show that the criterion cannot be satisfied and the essential functions cannot be performed with a reasonable accommodation. *42 U.S.C. §12111 (8)*
Drug Testing Cases

Connolly v. First Personal Bank
623 F.Supp.2d 928 (N.D. Ill. 2008)

• Applicant took a legally prescribed controlled substance (phenobarbitol) for a back condition
• After a drug test, bank rescinded its offer
• **Court:** Denied bank’s motion for summary judgment
• Although pre-employment drug tests for illegal drugs do not violate the ADA, when tests cover legally prescribed drugs and are used to make employment decisions beyond the prohibition of illicit drug use, then the use of those tests can violate the ADA.
• Not meant to be a “free peek” into medical history
Additional Resources on Medical Exams

- Disability-Related Inquiries and Medical Examinations of Employees Under the ADA
- Reasonable Accommodation and Undue Hardship Under the ADA
- Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations
- Job Applicants and the ADA
Confidentiality
Confidentiality Requirements

Information obtained regarding the medical condition or history of the applicant must be collected and maintained on “separate forms and in separate medical files” and treated as a confidential medical record, except that:

- supervisors and managers may be informed regarding necessary restrictions on the work or duties… and necessary accommodations;
- first aid and safety personnel.. when appropriate; and
- government officials investigating compliance…”

42 U.S.C. §12112(d)(3)(B)
What information is protected?

Employer-Mandated vs. Voluntary Disclosure

Most courts have found ADA confidentiality provisions apply to employer inquiries, but not voluntary disclosures by employees.

• Employer Inquiries Include:
  ❖ Requirements for leave under the FMLA or ADA
  ❖ Medical inquiries and examinations of applicants or employees
  ❖ Fitness for duty exams assessing ability to perform essential job functions
  ❖ Medical support for reasonable accommodation requests

• Voluntary Disclosures Include:
  ❖ Almost everything else (e.g., casual discussions, disclosures not in response to formal, mandatory requests for information)
Case Example: What information is protected?

Wiggins v. DaVita Tidewater, LLC

- Employee with bipolar disorder worked as a technician in a dialysis clinic
- Employee authorized her doctor to disclose her diagnosis to her employer
- Brought ADA lawsuit alleging that her employer unlawfully informed her colleagues and patients about her confidential medical information

Question
What do we need to know to determine whether this is an ADA violation?
Case Example:
What information is protected?

Answer: WHY did the employee disclose her disability?

- Here, employee voluntarily authorized information about her disability to be disclosed
- Employee was not requesting a reasonable accommodation
- Employee was not responding to medical examination or medical inquiry
- Court: Employee was not protected by the ADA’s confidentiality requirements because employee voluntarily disclosed her disability
Reasonable Accommodations
Discrimination under the ADA may include:
• Not providing a reasonable accommodation for known limitations caused by a disability

What is a Reasonable Accommodation?
• Modifications or adjustments to the work environment, or …
• to the manner or circumstances under which the position is customarily performed …
• that enable a qualified individual with a disability to perform the essential functions of that position … or …
• enjoy equal benefits and privileges of employment.

29 C.F.R. § 1630.2(o)(1)
# Most Common ADA Issues (2008-2010)

<table>
<thead>
<tr>
<th>Rank</th>
<th>Charge</th>
<th>% of all charges</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Discharge</td>
<td>59.14%</td>
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<tr>
<td>2</td>
<td>Accommodation</td>
<td>29.94%</td>
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<tr>
<td>3</td>
<td>Terms/Conditions</td>
<td>21.01%</td>
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<tr>
<td>4</td>
<td>Harassment</td>
<td>16.12%</td>
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<tr>
<td>5</td>
<td>Discipline</td>
<td>10.51%</td>
</tr>
<tr>
<td>6</td>
<td>Hiring</td>
<td>6.1%</td>
</tr>
<tr>
<td>7</td>
<td>Constructive Discharge</td>
<td>4.23%</td>
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Source: Calculations by S. von Schrader, Cornell University, Employment and Disability Institute, using the EEOC IMS files, 2008-2010. Development of this table was supported by Employer Practices Related to Employment Outcomes Among Individuals with Disabilities (H133B100017) funded by the U.S. Department of Education National Institute on Disability and Rehabilitation Research to Cornell University.
Three Categories of Accommodations

- Application Process
- Performance of the essential functions of the position
- Enjoyment of equal benefits and privileges of employment
Accommodation Basics

• Accommodations required:
  - Actual disability
  - Record of disability
• Accommodations not required:
  - Regarded as having a disability
  - Associated with a person with a disability
• Employees are free to provide accommodations beyond what’s required by the ADA.
You Be The Judge

- Bill does not have a disability but has a child with mental illness.
- He asks for a reasonable accommodation – modified work schedule so he can take child to therapy appointments.
- His employer says no.

ADA Violation?
Common Accommodations for People with Mental Illness

- Job restructuring – removing marginal tasks
- Flexible or modified scheduling
- Temporary light duty
- Rest and recovery breaks between assignments
- Additional training or instructions
- Job coach
- Allowing naps at lunch break
- Part-time or modified work schedules
- Reassignment to a vacant positions
- Unpaid leave
- Others?
Not Required to Provide An Accommodation That...

- Causes an **undue hardship** to the employer
- Results in a **direct threat** to the health or safety of the employee or others
- Is **unreasonable**
  - Requires reallocation of essential job functions
  - Will not enable to the employee to be qualified
  - Lowers production standards applied to all employees
  - Provides personal use items
  - Changes an employee’s supervisor
  - Excuses violation of uniformly applied conduct rules
Interactive Process
Step 1: Employee Request

• Requests do not need to be in writing
  ❖ Best practice: Put it in writing

• There is no specific language that must be used
  ❖ Best practice: Use ADA and reasonable accommodation

• Another person may request an accommodation on the employee’s behalf

• Request should describe:
  ❖ Nature of the disability/resulting limitation
  ❖ Need for an accommodation
  ❖ Requested accommodation, if known
No Knowledge by Employer

*Stewart v. St. Elizabeth's Hospital*
589 F.3d 1305 (D.C. Cir. 2010)

- Employee with mental illness did not put her employer on notice that she had a disability
- She was found “crying, shaking, [and] talking to herself” but explained this was because of other personal reasons

*Russell v. T.G. Missouri Corp.*
340 F.3d 735, 742 (8th Cir. 2003)

- Employee: “I need to leave and I need to leave right now”
- Did not mention her (previously disclosed) bi-polar condition as the reason why.
**Knowledge by Employer**

*Bultermeyer v. Fort Wayne Community Schools*

100 F.3d 1281 (7th Cir. 1996)

- Custodian developed bipolar disorder, anxiety attacks and paranoid schizophrenia requiring a series of medical leaves.
- Psychiatrist sent letter: “due to Bob’s illnesses . . . it would be in his best interest to return to a school that might be less stressful.”
- Court: Employer cannot expect an employee to read its mind and know that he or she must specifically say “I want a reasonable accommodation”
- Employer failed to engage in the interactive process
Step 2: Interactive Process

• Considerations during discussions with employer:
  ❖ Is the requested accommodation reasonable and effective?
  ❖ Do other possible accommodations need to be examined?
  ❖ Employers must provide an effective accommodation, not necessarily the requested one.
  ❖ Employee’s preference gets “primary consideration."

• Consult with:
  ❖ Supervisor and possibly HR
  ❖ Doctors
  ❖ VR agency
  ❖ Computer experts
  ❖ Resources – Job Accommodation Network
• Employers may request limited medical info regarding:
  ❖ The nature, severity, and duration of the impairment.
  ❖ The activity or activities that the impairment limits.
  ❖ The extent of the limitations of the impairment.
  ❖ How the impairment(s) relate to the accommodation.
• Employers are not entitled to release of entire medical record

  29 C.F.R. § 1630.2(o)(3); EEOC Enforcement Guidance on Reasonable Accommodation, and Undue Hardship.
Reasonable Accommodation

Step 3: Implement Accommodation

• If an effective reasonable accommodation is agreed upon, it should be implemented and there should be follow-up to ensure its effectiveness.

• The duty to accommodate is ongoing. The interactive process and the duty to accommodate can continue beyond the initial accommodation. The employer may need to modify the current accommodation or provide a new accommodation.
Preferred Accommodation May Be Required if Medically Necessary

_**Ekstrand v. Sch. Dist. of Somerset**_
583 F.3d 972 (7th Cir. 2009)

- Teacher with seasonal affective disorder was assigned to a noisy classroom without outside windows
- Requested quieter room with natural light and better ventilation
- School worked to remedy noise distractions and ventilation problem, but did not reassign teacher to a room with natural light, despite repeated requests
- Depression and anxiety worsened, requiring medical leave
- During leave period, teacher repeated her requests for a room switch
Preferred Accommodation May Be Required if Medically Necessary

• Dr. provided a note to the school district indicating the importance of natural light for an individual with seasonal affective disorder, and the link between teacher's room location and symptoms.

• **Court**: Prior to Dr.'s note, the school took accommodating steps to resolve teacher's concerns. Because school had no evidence that natural light was crucial to alleviating symptoms, it acted reasonably and was not required to provide the preferred accommodation of a room with natural light.

• **Court**: After Dr.'s note, the school district had notice of the importance of natural light, and had an obligation to "provide the specifically requested, medically necessary accommodation," (or preferred accommodation) absent undue hardship.
Work at Home / Telework

Humphrey v. Memorial Hospitals Association
239 F.3d 1128 (9th Cir. 2001)

- Medical transcriptionist with OCD asked to work-at-home
- Employer denied request due to employee’s disciplinary record for absenteeism/tardiness prior to her diagnosis
- Court: Working at home might be a reasonable accommodation
- Physical attendance is not an essential job function
- Association has allowed telework for other employees in the same position

EEOC telework guidance document:
www.eeoc.gov/facts/telework.html
Rescinding Discipline: Recent Cases

*Calandriello v. Tennessee Processing Center*
2009 WL 5170193 (M.D. Tenn. 2009)

- Employee had the company’s “Impact is Inspiration” poster (used to boost morale) with Charles Manson’s face substituted for employee’s picture
- Employee then disclosed that he had bi-polar disorder and asked to be “exempt from any disciplinary action”
- **Court:** Summary Judgment for employer - terminated due to “high risk” of continued employment; employer not required to “accommodate” disability by exempting from disciplinary action.
- **Note:** Other accommodations usually found to be unreasonable include changing supervisor; personal services.
Leave as an Accommodation

- Courts have approved various lengths of leave
- Indefinite leave is usually not a required accommodation
- **Tip for employees:** Better to provide a return to work date, although absolute certainty is not required
- Compare FMLA – 12 weeks of unpaid leave for serious medical condition
Leave as an Accommodation: Case Law

**Crabb v. SIU Sch. of Med.**
2010 WL 1790362 (C.D. Ill. Apr. 29, 2010)

- Employee received intermittent FMLA to treat anxiety and depression
- Employee hospitalized after exhausting FMLA leave
- Employee did not return to work and requested leave
- **Court**: Employee is “not entitled to receive unlimited time off in her sole discretion”
- Employers generally permitted to treat regular attendance as an essential job function
- Employers not required to permit indefinite leave as a reasonable accommodation
Leave as an Accommodation: Case Law

_Powers v. Polygram Holding, Inc._
40 F. Supp. 2d 195 (S.D.N.Y. 1999)

• Employee with “manic depressive disorder” requested various leaves of absence: requested 6 weeks of leave, then an additional month, then another additional month – all approved

• But when employee requested one more month, resulting in total request of 17 weeks of leave, request was denied

• Doctor stated that this request was “more certain” because it was based on “actual clinical improvement” by plaintiff

• Court: “[T]o require such certainty … would be to eviscerate much of the protection afforded under the ADA.”

• Court: It was “undisputed” that leave is a reasonable accommodation under the ADA and allowed case to proceed
Reassignment as an Accommodation

• Reassignment to a vacant position for which the employee is qualified may be an appropriate accommodation under the ADA
• Reassignment is generally not reasonable where it is sought to obtain a new supervisor or to escape certain co-workers
• Need not be a promotion
• Does not require bumping if there is a bona fide union or other seniority system
Reassignment: Recent Case Law

**EEOC v. United Airlines**
693 F.3d 760 (7th Cir. 2012)

- **Background:** United had a policy that employees with disabilities who could no longer do the essential function of their current jobs, could compete for open positions as a reasonable accommodation, but were not entitled to the position.

- **7th Circuit 3 Judge Panel:** Under existing precedent, reassignment to a vacant position was not required.

- **Full 7th Circuit:** In light of the Supreme Court’s decision in *Barnett v. U.S. Airways*, the ADA mandates that an employer appoint employees with disabilities to vacant positions for which they are qualified, provided that such accommodations would be ordinarily reasonable and would not present an undue hardship.
• Fact sheets / accommodation ideas for almost every impairment and disability: http://askjan.org/media/atoz.htm

• Technical assistance: http://askjan.org/JANonDemand.htm

• JAN’s Employers’ Practical Guide to Reasonable Accommodations: http://askjan.org/Erguide/

• JAN’s Sample Reasonable Accommodation Form http://askjan.org/media/accommrequestltr.html
Disability Harassment
To succeed in ADA harassment case, must prove that:

1. Plaintiff is a qualified individual with a disability
2. Plaintiff was subjected to unwelcome harassment
3. The harassment was based on plaintiff’s disability
4. The harassment was sufficiently severe or pervasive to alter a term, condition, or privilege of employment
5. Some factual basis exists to impute liability for the harassment to the employer (i.e. the employer knew or should have known of the harassment and failed to take prompt, remedial action)

Note: Element #4 is usually the hardest one to prove
Recent Case: 
**Schwarzkopf v. Brunswick**

_Schwarzkopf v. Brunswick Corp._
833 F.Supp.2d 1106 (D. MN., 2011)

- Fitness equipment fabricator with depression and an anxiety disorder worked for the defendant company for three years.
  - Before disclosing his disability he got along well with the other employees.
- After disclosing his disability, his supervisor started calling him “stupid,” “idiot,” “mental case,” “dumb,” and “incompetent” on a daily basis.
- His supervisor called people receiving Social Security disability benefits, “worthless pieces of shit.”
  - Told plaintiff several times that he wanted to put a shock collar on him because he was so forgetful.
Recent Case: Schwarzkopf v. Brunswick

• During a shouting match, the supervisor made a slashing motion across his neck.

• Plaintiff had to take medical leave to recover from the anxiety caused by the workplace conduct and was eventually told that he “voluntarily resigned” his position.

• He claimed harassment, retaliation, and constructive discharge.

• **Court:** Denied summary judgment to defendant on plaintiff’s disability harassment claim

• The comments were routinely made by supervisors and there was a clear connection between the adverse conduct and his increased anxiety and depression.
Standard for Severe and Pervasive

*Trevino v. United Parcel Serv.*

- UPS driver had depression, panic disorder, anxiety, PTSD
- Co-workers would ask her if she’s taken her medication.
- She felt she was wrongly accused of not following procedures on occasion.
- When told that she was, “noticeably distressed, disoriented, and gasping for air,” her manager took her off the road and had her tested at a hospital.
- Asked why she wasn’t on an FMLA day since she took them all the time.
Standard for Severe and Pervasive

- The company decided to terminate her based upon this incident, but this was later reduced to a written warning when the employee filed a grievance.
- During this period, she was also demoted.
- **Court:** “These instances are not sufficiently severe and pervasive to rise to constitute actionable harassment.”
  - No allegation that actionable comments occurred regularly.
  - Regarding the examination, the court said, “While the return-to-work requirements could have been completed more efficiently or communicated more clearly, Trevino has not produced evidence that they were sufficiently severe to support a claim of harassment.”
Harassment and Association

**Gouard v. McLane Midwest, Inc.**
2012 WL 3962659 (C.D. Ill. 2012)

- Plaintiff’s daughter was disabled from birth and he took FMLA leave to care for her daughter. Co-workers accused plaintiff of lying for the reason he took leave and also accused him of lying about severity of daughter’s disability. Plaintiff complained about co-worker treatment to management, but no action taken.
- Plaintiff subsequently terminated after arguing with harassing co-worker. (Co-worker not terminated.)

**Court:** Plaintiff’s claim for disability harassment can move forward.
- Management’s failure to respond to harassment was key factor.
- Case recognized that people who are associated with people with disabilities can bring an ADA harassment claim.
Practical Tips
Tips for Employees with Disabilities and Their Advocates

- Be ready to explain gaps in employment.
- If asked improper questions during an interview, simply say: “I’d like to focus on why I am qualified for the job.”
- Consider whether to disclose your disability – remember you are not required to disclose unless you are requesting a reasonable accommodation.
- Balance confidentiality concerns with the need for an accommodation.
- Duty to interact applies to both employers & employees.
- Ensure that any medical release is limited to need for accommodation.
Tips for Employees with Disabilities and Their Advocates

• When requesting a reasonable accommodations, identify your impairment, limitations and requested accommodations.
• Submit accommodation requests in writing. Document all interactions regarding accommodation request.
• Be far-reaching in exploring reasonable accommodation. For example, if you think unpaid leave would cause an undue hardship for your employer, examine part-time work or working from home.
• If you feel that discrimination has occurred, seek a copy of your personnel file and contact an appropriate agency.
• Feel free to add information to your personnel file.
Unlike other lawsuits, you cannot go directly to court to challenge employment discrimination.

- Must “exhaust” administrative remedies
  - Equal Employment Opportunity Commission
    - Must file within 300 days of discriminatory action
  - Illinois Department of Human Rights
    - Must file within 180 days of discriminatory action
- Do not need a lawyer
- Sometimes offered mediation
- Investigation → Finding → Notice of Right to sue
Resources
Resources: ADA Legal Briefs

- Reasonable Accommodations For People With Psychiatric Disabilities Under the ADA
- Invisible Disabilities and the ADA
- Drugs, Alcohol and Conduct Rules Under the ADA
- Can They Ask Me That? Advising People with Disabilities About the Disabilities Inquiry and Medical Examination Provisions of the Americans with Disabilities Act

www.adagreatlakes.org/Publications
Resources

• **Great Lakes ADA Center** - [www.adagreatlakes.org](http://www.adagreatlakes.org); 800/949 – 4232(V/TTY)

• **Job Accommodation Network** - [http://askjan.org/](http://askjan.org/)

• **Department of Justice** – [www.ada.gov](http://www.ada.gov)

• **Equal Employment Opportunity Commission** - [www.eeoc.gov](http://www.eeoc.gov)

• **Equip For Equality** - [www.equipforequality.org](http://www.equipforequality.org); 800/537-2632 (V); 800/610-2779 (TTY)

• **Illinois ADA Project** - [www.ada-il.org](http://www.ada-il.org); 877/ADA-3601 (V); 800/610-2779 (TTY)
Mental Illness & the Americans with Disabilities Act: What All Employees and Applicants Need to Know

QUESTIONS?

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