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When employers hear the name “Americans With Disabilities Act”—frequently referred to by its acronym, “ADA,”—they are likely to think of wheelchair ramps and other improvements designed to provide employees equal access to their facilities. An employer typically does not think of the accommodations to be made for employees suffering from major depression, bipolar disorder (commonly referred to as manic-depressive), anxiety disorders (including panic disorder, obsessive-compulsive disorder, post-traumatic stress disorder), schizophrenia, and personality disorders.

But persons suffering these types of mental disabilities have been protected from discrimination since the original passage of the ADA. These types of disorders have gained more pronounced attention recently with the Equal Employment Opportunity Commission's (EEOC) issuance of enforcement guidelines dealing with psychiatric disability under the ADA.

Such EEOC guidelines, as these, are not in and of themselves laws or even regulations, but do set forth guidance to EEOC investigators measuring an employer's compliance with the Act, and for that reason may present important bench marks for an employer.

The ADA is designed to be protective of employees at every stage of the employment process, from employment application to working conditions to the termination process. In the context of mental disabilities, as in the physical realm, the Act is protective of those suffering an impairment that affects quality of life by substantially limiting one or more the sufferer's major life activities, such as learning, thinking, concentrating, interacting with others, caring for oneself, speaking, performing manual tasks, and working or sleeping. An employee who does suffer such life impacting mental impairments may request, and the employer may be required to provide, reasonable accommodations in order to perform his or her job.

In the mental disability area particularly, it is often difficult for an employer to distinguish between substantially limiting mental impairments and what may possibly be mere character traits, behaviors or isolated displays of stress. Mental disability coverage of the ADA is a case by case determination. An employer's footfault can be very expensive. Before coming down hard on an employee who, it may appear, takes too many “mental health days,” the employer should consider first whether this commonly understood bromide for general work stress may not be indicative of something more for which the employer may have some responsibilities under the ADA.

If you have occasion to deny employment, terminate employment, or take any other actions against an employee for being “weird” or “disruptive,” consider consulting with an attorney conversant in all aspects of employment law, including application of the ADA. Consultation before action is taken can result in substantial savings to you in time and money, and save an affected employee additional heartache.