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Issues Regarding Compliance With the Americans With Disabilities Act

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ISSUES REGARDING COMPLIANCE WITH THE EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT:
A LEGAL ANALYSIS OF REHABILITATION ACT PRECEDENT AND NECESSARY ACTION STEPS

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I. Introduction

The Americans With Disabilities Act of 1990, 42 U.S.C.A. secs. 12101-1213 (West Supp. 1993), or "ADA," prohibits discrimination against individuals with disabilities in employment, public transportation, telecommunications, access to public accommodations, and the programs of public and private colleges and universities. Although similar in many respects to the Rehabilitation Act of 1973, 29 U.S.C.A. secs.701-797b (West 1985 and Supp. 1993), and the provisions of many state nondiscrimination laws,[1] the scope and nature of the ADA's protections are broader in many respects.

The ADA requires employers to provide a "reasonable accommodation" for applicants and employees with disabilities unless such accommodation creates an "undue hardship" for the employer.

Individuals who believe that an employment decision violates the ADA must file a charge with the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged discrimination. Remedies include reinstatement, back pay, other make-whole remedies, compensatory and punitive damages (up to $300,000), and attorneys fees.

II. Qualified Individual with a Disability

The employment provisions of the law protect anyone who is a "qualified individual with a disability," which is defined as an individual who,

> with or without reasonable accommodation, can perform the essential functions of the employment position that such

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[1]Forty seven states (all except Alabama, Arkansas, and Mississippi) prohibit discrimination on the basis of disability for both public and private employers. In three states, disability discrimination is prohibited by state law only in the public sector.

individual holds or desires."[2]

Essential functions, in turn, are defined as

(1) In general. The term "essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. The term "essential functions" does not include the marginal functions of the position.

(2) A job function may be considered essential for any of several reasons, including but not limited to the following:

(i) The function may be essential because the reason the position exists is to perform the function;

(ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or

(iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(3) Evidence of whether a particular function is essential includes, but is not limited to:

(i) The employer's judgment as to which functions are essential;

(ii) Written job descriptions prepared before advertising or interviewing applicants for the job;

(iii) The amount of time spent on the job performing the function;

(iv) The consequences of not requiring the incumbent to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

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[2]42 U.S.C.A. sec. 12111(8).

(vii) The current work experience of incumbents in similar jobs.[3]

Essential functions of a position should be identified before individuals are recruited for the position, and, if appropriate, should include physical, behavioral, and attendance requirements as well as descriptions of the tasks to be performed.

Essential functions may not be occasional or peripheral tasks. See Davis v. Frank, 711 F. Supp. 447 (N.D. Ill. 1989), in which the Postal Service's refusal to promote a clerk with a hearing impairment was found to violate the Rehabilitation Act. The Postal Service argued that the clerk was required to answer the telephone, but the court found this task not to be an essential function because it was rotated among employees.

III. Reasonable Accommodation

According to the ADA, the term "reasonable accommodation" may include:

1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.[4]

The regulations identify three types of reasonable accommodations:

1. Accommodations that are required to ensure equal opportunity in the application process;

2. Accommodations that enable the employer's employees with disabilities to perform the essential functions of the position held or desired;

3. Accommodations that enable the employer's employees

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[3] 29 C.F.R. 1630.2(n).

[4] 42 U.S.C.A. sec. 12111(9).

with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities[5]

The regulations do not address at what level the accommodation must enable the employee to perform. This issue will undoubtedly be addressed in future litigation.

Employers need accommodate only those disabilities of which they are aware. Notification from an applicant or employee that an accommodation is needed triggers the employer's procedural duty to analyze whether a reasonable accommodation is possible. If the employer is aware of the individual's disability, the accommodation requirement is triggered even if the employee does not make a formal request.

Employers may ask employees for medical documentation of the disability and the limitations it places on the employee's performance. The law requires that this information be kept confidential.

Reassignment to a vacant position is a type of accommodation mentioned in the statute. This may contravene seniority provisions of a collective bargaining agreement. In cases decided under the Rehabilitation Act, most courts found the seniority provisions to be an acceptable defense to a claim of disability discrimination.[6]

But clear language in the legislative history of the ADA suggests that such agreements may not provide a defense to a refusal to accommodate by reassignment.[7] See B. Lee, "Reasonable Accommodation and the Unionized Employer: Reassignment of Workers with Disabilities," 2 Human Resource Management Review 183 (1992). Employers should negotiate with unions (who also may be liable for disability discrimination under the ADA) contract language that permits the parties to waive seniority preferences when a qualified individual with a disability requires reassignment.

Potential legal claims related to seniority preferences in collective agreements:

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[5]29 C.F.R. sec. 1630.2(o).

[6]See, for example, Jasany v. U.S.P.S., 755 F.2d 1244 (6th Cir. 1985); Daubert v. U.S.P.S., 733 F.2d 1367 (10th Cir. 1984); Carter v. Tisch, 822 F.2d 465 (4th Cir. 1987).

[7]**H.R. Rep. no.** 485, 101st Cong., 2d Sess., p. 2, p. 68 (1990), reprinted in 1990 U.S.C.C.A.N. 267, 350.

a) Violations of the ADA's reasonable accommodation requirement by employer, union, or both;

b) Duty of fair representation lawsuits against union if union refuses to waive seniority provisions [see Vaca v. Sipes, 386 U.S. 171 (1967)];

c) Unfair labor practice charges, based on refusal to bargain with the union about terms and conditions of employment, a violation of section 8(a)(5) of the National Labor Relations Act [29 U.S.C.A. sec. 158(a)(5)] or "direct dealing" with a represented employee, a violation of section 9 of the National Labor Relations Act [29 U.S.C.A. sec. 159(a)];

(d) Breach of contract claims in state court.

Charges relating to these issues may be filed with the EEOC and the NLRB simultaneously, and the agencies have agreed to cooperate, but will retain jurisdiction and share information rather than deferring to one or the other. "Federal Agencies Reach Pact on Probing Charges Involving ADA, Unions," 4 Disability Compliance Bulletin 1 (December 22, 1993).

IV. Undue Hardship

The ADA defines "undue hardship" in this manner:

1. In General.--The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

2. Factors to be Considered.--In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include--

    a. the nature and cost of the accommodation needed under this Act;

    b. the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

    c. the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its

facilities; and

d. the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.[8]

There is no monetary cap on the cost of the accommodation. The regulations repeat the statutory definition, adding little clarity.

Research conductd on the cost of accommodating workers with disabilities has concluded that such costs are not high; in one study, more than half of the accommodations were cost-free (Collignon 1986); in a second, 54 percent were cost free and another 17 percent cost less than $500 (Lee and Newman, in press).

The leading case under the Rehabilitation Act is Nelson v. Thornburgh, 567 F. Supp. 369 (E.D. Pa. 1983, aff'd, 732 F.2d 146 (3d Cirl 1984), cert. denied 469 U.S. 1188 (1988). The court required the Pennsylvania Department of Public Welfare to hire readers for three blind income maintenance workers at a cost of $6,600, comparing that amount to the agency's $300 million administrative budget and concluding that the accommodation was not an undue hardship. But see Halsey v. Coca-Cola Bottling Co., 410 N.W.2d 250 (Iowa 1987), interpreting Iowa's nondiscrimination law to absolve company of need to permit visually-impaired driver's wife to drive his truck, with potential insurance and liability consequences.

Other types of "undue hardship" would be major changes to the employer's method of operation. See, e.g., Treadwell v. Alexander, 707 F.2d 473 (11th Cir. 1983) (applicant for park ranger with serious heart condition could not be accommodated without shifting most of his responsibilities to other rangers) and Dexler v. Tisch, 660 F. Supp. 1418 (D. Conn. 1987) (applicant for Postal Service job who had achondroplastic dwarfism could not be accommodated without substantial change in Service's mail-sorting system, which would be costly and inefficient).

A. Employee Morale as Undue Hardship

Under the Rehabilitation Act, employers have defended a refusal to accommodate a worker on the grounds that other workers will resent the "special treatment." With regard to this defense, the ADA regulations state:

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[8]42 U.S.C.A. sec. 12111(10).

> . . . the employer would not be able to show undue hardship if the disruption to its employees were the result of those employees' fears or prejudices toward the individual's disability and not the result of the provision of the accommodation. Nor would the employer be able to demonstrate undue hardship by showing that the provision of the accommodation has a negative impact on the morale of its other employees but not on the ability of these employees to perform their jobs.[9]

Courts have generally rejected these arguments under the Rehabilitation Act as well. See Davis v. Frank, 711 F. Supp. 447 (N.D. Ill. 1989) (Postal Service's argument that co-workers would resent answering the telephone was insufficient to constitute undue hardship for accommodating worker who had hearing impairment). See also Jenks v. AVCO Corp., 490 A.2d 912 (Pa. Super. 1985) (giving partially paralyzed applicant hydraulic cart to perform his job not an undue hardship, even if co-workers resented the accommodation). Similarly, concern over "reverse discrimination" claims by nondisabled workers is unfounded, since the ADA does not provide for "reverse discrimination" claims. R.K. Murphy, "Reasonable Accommodation and Employment Discrimination Under Title I of the Americans with Disabilities Act," 64 Southern California Law Review 1607 (1991). Co-worker fears concerning the individual's disability also do not pose an undue hardship for the employer. See Jansen v. Food Circus, 541 A.2d 682 (N.J. 1988).

B. The "Safety Defense"

The EEOC Title I substantive regulations state that the employer must demonstrate that there is a direct threat to the safety of the individual or others. "Direct threat" is defined as 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." The regulations require the employer to make an individualized determination based on the applicant or worker's "present ability to safely perform the essential functions of the job." The determination must be made on the basis of "a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence."[10]

The regulations follow the approach used by the U.S. Supreme Court in School Board of Nassau County v. Arline, 480 U.S. 273

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[9] 29 C.F.R. 1630.15(d) (Interpretive Guidance).

[10] 29 C.F.R. sec. 1630.2(r).

(1987), which determined that contagious diseases were covered by the Rehabilitation Act. The Supreme Court listed four factors that a court (and presumably the employer initially) should consider in determining whether an individual with a contagious disease should be permitted to remain in the workplace:

1. Nature of the risk (how the disease is transmitted)

2. Duration of the risk (how long is the carrier infectious)

3. Severity of the risk (what is the potential harm to third parties) and

4. Probabilities the disease will be transmitted and will cause varying degrees of harm.[11]

The employer must make an individualized determination, based on the individual's medical history, the nature of the disability, the type of job, and probability that that particular individual will pose a direct threat. See Chalk v. United States District Court, 840 F.2d 701 (9th Cir. 1988). See also Mantolete v. Bolger, 767 F.2d 1416 (9th Cir. 1985).

The EEOC regulations require the employer to take the following four factors into consideration:

1. Duration of the risk

2. Nature and severity of the potential harm

3. Likelihood that the potential harm will occur

4. Imminence of the potential harm.

The interpretive guidance accompanying these regulations adds:

> Such considerations must rely on objective, factual evidence--not on subjective perceptions, irrational fears, patronizing attitudes, or stereotypes--about the nature or effect of a particular disability, or of disability generally. . . Relevant evidence may include input from the individual with a disability, the experience of the individual with a disability in previous similar positions, and opinions of medical doctors, rehabilitation counselors, or physical therapists who have expertise in the disability involved and/or direct knowledge of the individual with a

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[11] 480 U.S. at 288.

disability.[12]

C. Misconduct

The ADA protects individuals with mental as well as physical disabilities. Individuals with disabilities can be held to the same performance and conduct standards as other employees. If the conduct does not warrant discharge the individual may be entitled to reasonable accommodation that would enable him or her to meet the performance and conduct standards of the employer. If the misconduct is serious and the employer can demonstrate that it would be an undue hardship to require the employer to tolerate such misconduct, then the employer can take action against the employee, despite the disability. But the mere fact that the employee engages in misconduct does not excuse the employer from its duty to perform the analysis regarding reasonable accommodation.

The regulations provide little guidance for dealing with workers with mental or psychiatric disabilities, as all but one example of reasonable accommodations involve physical disabilities.[13]

Courts interpreting the Rehabilitation Act have been rather unsympathetic to workers who, when discharged for misconduct, have argued that the misconduct was a manifestation of their disability.

1. **Disruptive behavior in the workplace.** If the behavior interferes with the conduct of the business or is a violation of company policy, the employer need not retain the employee. See Adams v. Alderson, (723 F. Supp. 1531 (D.D.C. 1989)) (computer programmer with an adjustment disorder and compulsive personality disorder assaulted his supervisor and destroyed office equipment. The court rejected the worker's request that he be accommodated by reassigning him to a different supervisor). A worker whose personality disorder rendered her rude, disruptive, and insubordinate was denied relief under the

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[12]29 C.F.R. sec. 1630.2(r). Evidence from a recent Gallup Poll demonstrates that concerns that workers with disabilities will pose a safety threat are exaggerated. In a random sample of 400 employers, 55 percent responded that workers with disabilities worked as safely or more safely than their nondisabled coworkers. Gallup Organization, "Baseline Study to Determine Business' Attitudes, Awareness, and Reaction to the Americans With Disabilities Act" 56 (October 1992).

[13]29 C.F.R. sec. 1630.2(o).

Rehabilitation Act.[14] And a worker with psychiatric problems who was abusive to the employer's doctor was discharged. The court upheld the employer's decision, stating that no appropriate accommodation was possible.[15]

These precedents do not absolve the employer of considering whether a reasonable accommodation is possible, including, for example, paid or unpaid leave, counseling or other medical treatment, or reassignment. For an analysis of the employer's duties to employees with mental disabilities, see M.H. Edwards, "The ADA and the Employment of Individuals with Mental Disabilities," 18 Employment Relations Law Journal 347 (1992-3).

2. **Off-duty misconduct.** Most cases in which off-duty misconduct has resulted in discharge have involved excessive alcohol consumption or drug use. The employer must be able to state a relationship between the nature of the misconduct and the worker's continued fitness to perform the job. This is relatively simple if the employee is a law enforcement agent or occupies a position of public trust (such as a schoolteacher, holder of public office, or judge).

In Butler v. Thornburgh,[16] an FBI agent engaged in several assaults while off duty, and damaged a government vehicle and the wall he hit, all while intoxicated. The court upheld the discharge, stating that the misconduct demonstrated that the employee could not perform his work safely. In a similar case, a criminal investigator for the Bureau of Alcohol, Tobacco and Firearms was discharged after he was charged with vehicular homicide resulting from driving while intoxicated.[17] Police officers arrested off-duty for possession of narcotics have also found no recourse under the Rehabilitation Act.[18]

Employers have also prevailed in cases not involving law

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[14]Allen v. Stone, 1992 U.S. Dist. LEXIS 1008, 9 (D.D.C. 1992). The court noted, "it would have been impossible to create a work environment in which plaintiff would be immune from criticism, supervision, or authority, or to guarantee that her superiors would not impose constraints that she would not find unreasonable."

[15]Pesterfield v. Tennessee Valley Authority, 941 F.2d 437 (6th Cir. 1991).

[16]900 F.2d 871 (5th Cir.), cert. denied, 111 S. Ct. 555 (1990).

[17]Wilber v. Brady, 780 F. Supp. 837 (D.D.C. 1992).

[18]Copeland v. Philadelphia Police Department, 840 F.2d 1139 (3d Cir. 1988), cert. denied, 490 U.S. 1004 (1989).

enforcement employees. A labor relations specialist whose kleptomania[19] and anxiety disorder resulted in several arrests was discharged; a judge refused to require his employer to restructure his job to eliminate the elements (primarily travel) that triggered his attacks and noted that the worker had lost the trust of his coworkers.[20] Similarly, a postal worker was discharged for an off-duty assault with intent to kill, which he claimed was a result of alcoholism and depression. The federal judge ruled:

> The [law] . . . does not prohibit an employer from discharging an employee for improper off-duty conduct when the reason for the discharge is the conduct itself, and not any handicap to which the conduct may be related.[21]

3. **Excessive absences and tardiness.** Although most workers with disabilities have better attendance than nondisabled individuals,[22] nevertheless, the courts have been called upon to determine whether an employer can legitimately discharge a worker with a disability for excessive absences or tardiness.

The issue the courts have addressed is the worker's reliability. For example, in Guice-Mills v. Derwinski,[23] a former head nurse at a Veterans Administration hospital could not arrive at work on time because her disability--depression and stress--made getting up in the morning very difficult. The hospital refused to change her shift because it said an essential function of her job as a supervisor was to be present when the shift began. The plaintiff had refused the hospital's accommodation offer of demotion to floor nurse, in which it could have offered her a later work schedule; the court ruled that the hospital had satisfied its obligation under the Rehabilitation Act.

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[19]Kleptomania is a condition excluded from coverage under the ADA. Sec. 511(b).

[20]Fields v. Lyng, 705 F. Supp. 1134 (D. Md. 1988).

[21]Richardson v. U.S.P.S., 613 F. Supp. 1213 (D.D.C. 1985).

[22]Collignon 1986, p. 208. Although the employee could not challenge an employer's paid sick leave policy as discriminatory, additional unpaid sick leave may be requested as an accommodation and should be provided unless the employer can demonstrate that to do so would impose an undue hardship. Leave as an accommodation should generally be requested in advance.

[23]772 F. Supp. 188 (S.D.N.Y. 1991), aff'd 967 F.2d 794 (2d Cir. 1992).

Similarly, a supervisor who was absent in cold weather because of its effect on her asthma, was discharged for excessive absences. The employer, a bank, offered to give her flexible work hours, access to breathing equipment, and two hours per month of medical leave (in addition to her sick leave). The plaintiff said she wanted to work eight months per year, and that the nature of her disability mandated such an accommodation. The court ruled that regular attendance was an essential function of a supervisory job, and that the requested accommodation was a new position, which the bank did not have to create.[24] The Postal Service discharged a legal secretary whose emotional problems caused her to be absent frequently. The court refused to accept the employee's argument that the Postal Service should have hired a temporary employee to perform her work when she was absent; the Postal Service had also offered the worker reassignment to a lower grade (and lower stress) job, which she had refused. The court ruled that such an offer was a good faith reasonable accommodation.[25]

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[24]Magel v. Federal Reserve Bank of Philadelphia, 776 F. Supp. 200 (E.D. Pa. 1991).

[25]Matzo v. Postmaster General, 685 F. Supp. 260 (D.D.C. 1987), aff'd without opinion, 861 F.2d 1290 (D.C. Cir. 1988).

V. Alcoholism and Drug Abuse

The ADA protects individuals with alcoholism (because it does not exclude them), but specifically excludes from the definition of "qualified individual with a disability" "any employee or applicant who is currently engaging in the illegal use of drugs."[26]

However, the law does not exclude from the definition of "qualified individual with a disability" an individual who:

1. has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

2. is participating in a supervised rehabilitation program and is no longer engaging in such use; or

3. is erroneously regarded as engaging in such use, but is not engaging in such use.[27]

These individuals must have a record or history of drug addiction to be covered; casual users of illegal drugs are not protected by the ADA. The law does permit the employer to adopt drug testing policies and to test rehabilitated former users of illegal drugs. Because the ADA also covers individuals who either have a record of a substantially limiting impairment or who are regarded as having a substantially limiting impairment, a recovering alcoholic or former drug addict would be covered under that language, as long as the individual did not resume the abuse.

The law specifically permits the employer to hold an employee who abuses alcohol or drugs to the same qualification and performance standards as other employees, even if that employee's performance problems are related to the drug or alcohol abuse.[28] Employers may also forbid the use of drugs or alcohol at work,[29] and may follow all applicable federal regulations regarding the use of alcohol and/or drugs.[30]

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[26]42 U.S.C.A. sec. 12111(b)(3).

[27]42 U.S.C.sec. 12114(b).

[28]42 U.S.C. sec. 12114(c)(4).

[29]42 U.S.C. sec. 12114(c)(1).

[30]42 U.S.C. sec. 12114(c)(5).

The employer cannot refuse to hire or discharge an individual solely on the basis of the alcoholism. The employer would be required to go through the same analytical process for an employee with alcoholism that it would for an employee with any other type of disability covered by the ADA: what accommodation would be appropriate, and is that accommodation an undue hardship for the employer?

For example, if an employer gives an individual with cancer a disability leave or a flexible schedule so that the cancer patient can receive treatment, the employer must do the same for a person with alcoholism. Employers who have treated such persons more harshly than individuals with other types of disabilities have been found to have violated the Rehabilitation Act. However, if the employer can demonstrate that the proposed rehabilitation will not be effective, or that the employee has consistently resisted attempts at rehabilitation in the past, the courts have found for the employer.[31]

It is possible that the work performance of an employee with alcoholism will not be acceptable; that is often the way the employer discovers that the individual has alcoholism. The U.S. Office of Personnel Management has developed a system for dealing with a poorly performing employee with alcoholism; although private sector employers are not bound by these guidelines, they are a useful tool for dealing with such individuals:

> Conduct an interview with the employee focusing on poor work performance and inform the employee of available counseling services if poor performance is caused by any personal or health problem.
>
> If the employee [subsequently] refuses help, and performance continues to be unsatisfactory, provide a firm choice between accepting [company] assistance through counseling or professional diagnosis of his or her problem, and cooperation in treatment if indicated, or accepting consequences provided for unsatisfactory performance.[32]

The Handbook suggests that the employer consult medical experts,

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[31] Crewe v. U.S. Office of Personnel Management, 834 F.2d 140 (8th Cir. 1987); LeMere v. Burnley, 683 F. Supp. 275 (D.D.C. 1988).

[32] OPM Handbook of Reasonable Accommodation, 1980. It should be noted that the ADA does not require a "firm choice" for persons with alcoholism, but holds them to the same performance standards as other workers. But using the "firm choice" approach encourages the worker to seek assistance.

including sending the employee for a fitness-for-duty examination. If the experts indicate that treatment or rehabilitation is needed, the employee should be offered that opportunity. If the employee is found to be fit for work, supervisors and managers should not accuse the individual of abusing alcohol, but should focus on the performance problems and require the employee to adhere to performance, attendance, and other company standards. See, e.g., Whitlock v. Donovan, 598 F. Supp. 126 (D.D.C. 1984). See also LeMere v. Burnley, 683 F. Supp. 275 (D.D.C. 1988) and McElrath v. Kemp, 714 F. Supp. 23 (D.D.C. 1989). For further analysis of this issue, see W. K. Voss, Note: "Employing the Alcoholic Under the Americans with Disabilities Act of 1990," 33 William and Mary Law Review 895 (1992).

VI. Conclusion

The ADA imposes an affirmative procedural duty on the employer to evaluate whether an individual is "qualified" and if so, to perform the reasonable accommodation analysis. See Arneson v. Sullivan, 946 F. 2d 90 (8th Cir. 1991) (decided under the Rehabilitation Act). It also requires the employer to periodically review the continuing effectiveness of the accommodation. See Dean v. Municipality of Metropolitan Seattle-Metro, 708 P.2d 393 (Wash. 1985) (decided under Washington law). The determination of reasonableness will vary depending on the nature of the job, the type of disability, and the characteristics of the worker. Thorough documentation of the employer's analysis and good faith efforts will be critical to successful defenses of ADA claims.

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