

# BETWEEN A ROCK & A HARD PLACE: MANAGING & ACCOMMODATING MENTAL ILLNESS IN THE WORKPLACE

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**FRAN HAAS** is an attorney in Nyemaster's Labor and Employment Department and handles various employment matters. She litigates on behalf of management in state and federal courts and administrative agencies in the following areas: discrimination, harassment, and retaliation based on race, sex, age, national origin, disability, and veteran status; Family and Medical Leave Act; Equal Pay Act; wrongful termination; and unemployment. Fran also advises clients on various wage and hour issues, drug-testing, employee separations, employment handbooks, leave issues, employment agreements, and severance agreements. Fran is a contributing author to the firm's Labor and Employment Blog and the firm's Appellate Blog. She also speaks at various seminars and CLEs on a variety of employment-related topics. A native of Davenport, Iowa, Fran received her B.A. in French from the University of Northern Iowa (2001), where she graduated first in her class. She received her J.D. from the University of Iowa College of Law (2004), graduating with high distinction and Order of the Coif. Prior to joining Nyemaster Goode, Fran clerked for Chief Judge Linda R. Reade in the United States District Court for the Northern District of Iowa. She is a former litigation associate of Michael Best & Friedrich LLP's office in Madison, Wisconsin.

# MENTAL HEALTH AND THE AMERICAN WORKFORCE

- Growing recognition of mental health issues in the workplace
- Increasing number of mental health diagnoses

## MENTAL HEALTH IMPAIRMENTS

- Some are nearly always covered: major depressive disorder, bipolar disorder, PTSD, OCD, schizophrenia
- Many others are frequently covered: anxiety, other forms of depression, learning disorders, intellectual disabilities (if it substantially limits one or more major activities)
- Focus more on accommodation rather than meeting definition

## ACCOMMODATING MENTAL HEALTH ISSUES

- *EEOC v. The Lash Group*
- *Solomon v. Vilsack*
- *EEOC v. Direct Optical*

## TAKE-AWAY FROM RECENT CASES

- Be wary of rigid policies
- Avoid inflexible responses to requests for accommodation
- “Bend over backwards” rule

# MANAGING MENTAL HEALTH ISSUES

- How do I know when an employee requires an accommodation when an employee doesn't ask?
  - Employer “knew or should have known” of disability
  - Once there is a known disability and known need for an accommodation, an employer must engage in interactive process to identify limitations and reasonable accommodations - 29 C.F.R. 1630.2(o)(3)

# MANAGING MENTAL HEALTH ISSUES

(CONT'D)

- **First level approach:**
  - **Spell out intention how to initiate the accommodation process; train supervisors on responding**
  - **Follow regular management practices when you observe negative change in performance or attendance or receive complaints from co-workers**

# MANAGING MENTAL HEALTH ISSUES

(CONT'D)

- **Second level approach:**
  - **Medical examination that is job-related and consistent with business necessity - 29 U.S.C. 12112(d)(4)(A)**
  - **Does this qualify? New employee reports concerns about a retirement-age supervisor who forgot he had assigned a big marketing project to the reporting employee**



# MANAGING MENTAL HEALTH ISSUES

(CONT'D)

- **Managing nosy or concerned co-workers**
  - **Envious of perceived leniency on performance or superior work conditions**
  - **Concerns with workplace violence**

# QUESTIONS?

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