

# Employee acting out of character? Balance safety, liability

An otherwise good employee is acting out of character, and you think she needs help. Do you insist she contact the employee assistance program (EAP) and send her home?

Allowing an employee to come to work when she may be a danger to herself and others may violate your OSHA safety responsibility. On the other hand, if you treat the employee as if she's disabled but she really isn't, you may be setting yourself up for an ADA lawsuit.

**Bottom line:** Before you place the employee on involuntary leave or fire her, check with your EAP for guidance. But keep the information strictly confidential. Call counsel, too.

**Recent case:** Shirley Savage worked for the state and spent 80 percent of her work time with the public.

When Savage told a supervisor that her co-workers were monitoring her moves by a tracking device placed in her food, management naturally became alarmed. But while Savage certainly seemed paranoid, she also seemed to be doing her job well. Nonetheless, her supervisors insisted she contact an EAP counselor.

She did, and a psychiatrist suggested she stay out of work until her delusions abated. However, the psychiatrist didn't declare her unfit for work. Her employer continued to pay her and offered to place her in a nonpublic position until she got better.

She sued, alleging FMLA and New Jersey Law Against Discrimination (LAD) violations. The court dismissed her FMLA claim, since the psychiatrist said she didn't have a serious health condition. But the federal court sent her LAD case back to the New Jersey state court system. (*Savage v. State of New Jersey*, No. 05-2047, DC NJ, 2007)