

Are we allowed to fire a mentally ill employee who makes threats?

Q. On three occasions, an employee threatened colleagues with physical violence. Each time she was counseled and told that she could be terminated if the threats continued. After the last incident, she explained to her manager that she is bipolar and going through a prescription change. She said she was unaware of making threats, was truly sorry and never meant any harm to anyone. Do we have to tolerate this behavior now that we know she may be disabled?

A. While the ADA prohibits employers from discriminating against qualified individuals based on a disability, courts have ruled that employers are not required to sacrifice the safety of employees in the workplace if the employee poses a direct threat to the health or safety of others.

Simply having bipolar disorder isn't a direct threat. Employers should individually assess whether the employee presents a direct threat. Consider the (1) duration of the risk, (2) nature and severity of the potential harm, (3) likelihood that potential harm will occur and (4) the imminence of the potential harm.

Your determination that the employee poses a direct safety threat must be based on objective, factual evidence and not on subjective perceptions, fears or stereotypes.

Consider whether you can reasonably accommodate the employee. If you determine that providing an accommodation will not reduce or eliminate the safety threat, you may terminate the employee.

Carefully document the analysis and steps you take when deciding to terminate the employee. Be sure you follow the same rules for both nondisabled and disabled employees.