

# Hidden Disabilities: What's Your Responsibility to Accommodate?



While the Americans with Disabilities Act (ADA) says you must offer a "reasonable accommodation" to disabled employees, how obvious must the person's disability be before you fall under that requirement? And what is the employee's duty to alert you and request the accommodation?

As this case shows, courts don't expect you to play a guessing game with your staff. Employees have a responsibility to explain their conditions and request an accommodation.

**Case in Point:** Marissa, an analyst at a Minnesota financial firm, worked for 15 years without incident. But then her behavior started to become erratic. She acted aggressively with co-workers, talked "very rapidly," spoke disrespectfully to her manager and sent emails that didn't make any sense. She was issued a formal behavior warning.

After that, Marissa requested and was granted leave under the Family and Medical Leave Act, but never disclosed to the organization the reason for the leave. In truth, she had been diagnosed with bipolar disorder.

When she returned to work, Marissa gave HR a doctor's note that said she had "been stabilizing on her medication." The note didn't reveal the nature of her condition or request any work accommodations.

However, she soon began to exhibit the same behavioral problems. A manager coached her to "be more gentle" in her communications, but that didn't help. She was eventually given a written warning and ultimately fired for her misconduct. Never during the process did she disclose she was bipolar.

Marissa filed a discrimination lawsuit under the ADA. She said the company failed to accommodate her disability, claiming it should have known about her condition because it was "open, obvious and apparent." Her employer defended the claim with the "we knew nothing" defense.

**Result:** The court sided with the company, and an appeals court agreed. It said, "At no point did Marissa inform her employer that she suffered from bipolar disorder or requested any accommodation." The employee's failure "to disclose her nonobvious disability and any related limitations" or her need for accommodation also doomed her ADA claim. ([\*Walz v. Ameriprise Fin., Inc.\*](#), 8th Cir., 3/9/15).

## 3 Lessons Learned...Without Going to Court

1. **Don't be nosy.** Employees are responsible for asking for reasonable accommodations under the ADA. If an employer gets too nosy, it may become the target of a lawsuit related to an unlawful ADA medical

inquiry.

2. **Give chances.** The court recognized that the employer gave Marissa many chances to explain her behavior and she failed to do so. Thus, when the company couldn't put up with her actions any longer, firing her was a reasonable move.
3. **Document performance.** The employer had a substantial list of essential elements of the job and documentation showing she was not performing. While some disabilities are invisible, don't let your documentation be.