

Don't let abusive staff use disability as excuse; you can fire for behavior

Don't allow employees to use their disabilities as justification for poor behavior, especially if it clearly threatens your workplace.

Even if an employee is legitimately considered "disabled" under the Americans with Disabilities Act (ADA), he can be fired (or refused a job) if you can prove his condition threatens others' safety. Companies usually prevail when they've let an employee go for "behavior," not for disability.

The case below provides another lesson: Employees can't prove they're disabled simply by submitting medical-impairment evidence. Instead, they must individually prove that the impairment "substantially limits a major life activity" to earn ADA protection.

Recent case: A production mechanic was involved in several altercations with co-workers, including threatening and verbally abusing a female employee. He was then diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), and given counseling, medication and 40 FMLA leave days.

Soon after he returned to work, he started a heated argument with his supervisor and continued behaving so irrationally that the supervisor feared for his safety. The mechanic was fired, based on his poor disciplinary record.

He filed an ADA lawsuit, but the courts sided with the company. Why? If an employee's unacceptable behavior threatens others' safety, the law says you can fire him even if the behavior stems from a mental disability.

Also, while ADHD may be viewed as an ADA disability under different circumstances, the court said the mechanic wasn't disabled because he couldn't prove that his condition substantially impaired his major life activities, in this case, his ability to think, learn and speak. (*Calef v. Gillette Co.*, No. 02-1444, 1st. Cir. 2003)