A Practical Perspective on Employee Violence and the Americans with Disabilities Act

by Georgia A. Staton and Greg J. Thompson

Ten years ago if you said "going postal," people would have thought you were going to buy stamps at the post office. Now, everyone immediately knows that you are referring to violence in the workplace. Statistics support this new turn of phrase. The Bureau of Labor Statistics of the United States Department of Labor announced that homicides accounted for 15 percent of all occupational fatalities in 1996.[1] Each year workers are the victims of physical attacks in the workplace.[2] Estimated at $4.2 billion, costs to employers are enormous.[3]

Since there has been a disturbing increase in the number of attacks by employees against co-workers, it has been suggested that employers protect themselves against such liability by screening applicants, and investigating, disciplining and discharging employees who manifest the potential to commit violence. Unfortunately for employers, these measures may violate their responsibilities under the Americans with Disabilities Act. The ADA limits an employer's ability to screen applicants for conditions that may indicate a potential to commit violence (such as psychological disorders) and requires an employer to provide reasonable accommodations for employees who suffer from such conditions.

The Exclusivity Provision of Workers' Compensation Statutes

Generally, a state's workers' compensation laws form the framework for identifying an employer's responsibilities to employees injured as a result of workplace violence and provide the exclusive remedy for injuries suffered by employees during the course of their employment.[4] The public policy behind workers' compensation arises from the bargain reached between the employer and employees—the employer assumes liability for industrial personal injury or death without regard to fault in exchange for limiting the amount of its liability. On the other hand, the employee is given payment of benefits without the necessity of proving fault, but in exchange for that benefit gives up the full range of tort damages that would ordinarily be available.

Generally, injuries or deaths resulting from workplace assaults are compensable under workers' compensation.[5] However, some courts have held that workplace assault claims[6] are not barred because they are not "accidental" as defined within the workers' compensation act.[7] Other courts have held that workplace assaults are "accidental" by nature, and workers' compensation is the exclusive remedy.[8] Furthermore, in most jurisdictions, the exclusivity provision of workers'

compensation has a statutory exception for intentional torts committed by the employer. For example, in *Ford v. Revlon Inc.*,[9] the Supreme Court of Arizona held that Arizona's workers' compensation law did not provide the exclusive remedy to Leta Fay Ford, a Revlon employee who was sexually harassed and physically assaulted by a co-worker. The court upheld the jury's verdict against Revlon, stating that the tort was committed through Revlon's inaction over a period in excess of eight months and that the resulting emotional injury to the plaintiff was therefore not unexpected or accidental.[10] Ford's recovery was not limited to a workers' compensation claim.

A few years after the *Ford* decision, the Arizona Court of Appeals, in *Irvin Investors Inc. v. Superior Court*,[11] was called upon to determine whether an employee could sue her employer in a tort action when she was sexually molested by a co-worker. She cited *Ford* as authority to bring an action against her employer. The Court of Appeals rejected her claim, stating that there was no evidence that the employer was even aware of the co-worker's misconduct until she quit.[12] Furthermore, the conduct was described as an "unexpected injury-causing event" within the coverage of the workers' compensation statute.[13]

These cases suggest a possible trend toward erosion of the exclusivity ban of workers' compensation when it comes to workplace violence.[14] If an employer is presumably "on notice" that an employee displays episodes of violence and does nothing, or very little, for a protracted period of time and the employee ultimately engages in a violent act resulting in physical harm and emotional distress, can the injured worker bring a claim for intentional infliction of emotional distress against the employer? The answer appears to be a qualified yes.

The Americans with Disabilities Act[15]

How can employers protect themselves from workplace violence claims?[16] The best defense is a good offense. Certainly, the first place to start is the hiring process, thorough background checks, interviews and testing—all good tools to ensure a stable workforce. Unfortunately, questions during an interview designed to ferret out an employee's emotional stability may well create problems for the employer under the ADA.[17] Although many instances of workplace violence are not perpetrated by those suffering from mental illness, many are.[18] As soon as issues of mental health are implicated in the workplace the protections of the ADA are triggered.[19]

What is a Disability?

The term "disability" has three distinct definitions under the ADA.[20] An employee is considered disabled if he or she: (1) has a physical or mental impairment that substantially limits one or more major life activities of an individual; or (2) has a record of such impairment; or (3) is regarded as having such an impairment.[21] In order to avail themselves of the Act's protection, an applicant or employee must qualify under one of the three definitions.

Physical or Mental Disability

Interestingly, the term physical or mental impairment is not defined in the Act.[22] The ADA regulations, however, recognize that psychiatric disorders are included within the term "disability," and define this phrase to include:

(1) any physiological disorder, or condition...or (2) any mental or physiological disorder, such as mental retardation, organic brain syndrome, emotional or mental

illnesses, and specific learning disabilities.[23]

Under the Rehabilitation Act of 1973, various psychiatric disorders were deemed "mental handicaps."[24] The legislative history for the ADA states that the regulations implementing the Rehabilitation Act also govern the term "disability" as used in the ADA.[25]

Accordingly, various disorders that have been recognized as "mental handicaps" under the Rehabilitation Act will likely be deemed a disability under the ADA—depression, schizophrenia, post-traumatic stress disorder and bipolar disorder.[26] The current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) is relevant for identifying these disorders. Not all conditions listed in the DSM-IV, however, are disabilities or even impairments for the purposes of the ADA.[27]

According to the Equal Employment Opportunity Commission (EEOC), the definition of "impairment" does not include common personality traits and behaviors such as stress, irritability, chronic lateness, poor judgment or a quick temper, provided these characteristics are not symptoms of a mental disorder.[28] An individual possessing these characteristics alone, therefore, will not be considered "disabled" under the ADA.[29]

Only a "qualified individual" is protected under the ADA. The term means:

(1) an individual with a disability;

(2) who can perform the "essential functions" of the employment position (held or desired);

(3) with or without reasonable accommodation.[30]

The EEOC has developed regulations which provide a more detailed definition of the term "qualified individual with a disability":

> [a]n individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.[31]

A "qualified individual with a disability" is defined further by the EEOC as an individual who has an impairment that substantially limits one or more "major life activities," such as: "[C]aring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working."[32] In regards to the major life activity of working, a substantial limitation means:

> [S]ignificantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared with the average person having comparable training, skills, and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of work.[33]

The recent EEOC Guidelines attempt to clarify the term "substantial limitation," describing an impairment as substantial when individuals have regular and severe problems, such as high levels of hostility, withdrawal, failure to communicate when necessary, or when a mind is "going blank" frequently.[34] As an example of a non-substantial impairment, the guidelines refer to an "adjustment disorder" relating to the end of a romantic relationship.[35] An "adjustment disorder" would not constitute a disability because of its short-term impairment and non-significant restriction of major life activities during the period of impairment.

Record of Impairment

An employee can also be deemed disabled if he has a "record of impairment."[36] This definition covers an employee who does not currently have a physical or mental impairment that substantially limits his/her ability to engage in a major life activity,

but who has a record of having had such an impairment. This definition of disability protects people who may have been misclassified or misdiagnosed as having a disability. For example, it would protect a person who is otherwise qualified from being denied employment because the employer relied on records such as an educational, medical or an employment record that contained a misclassification or misdiagnosis. If an employer relies on those records of physical or mental impairment and discriminates against the employee based on those records, the employer has violated the ADA.[37]

Regarded as Being Impaired

The third definition of disability is if an individual is "regarded as having an impairment."[38] Under this definition an employee is disabled if the employer merely "regards" or "perceives" an individual as disabled and discriminates against the individual on the basis of that perception.[39] This definition is intended to reach perceptions based upon myth or stereotype. In short, a person is deemed disabled even though he/she has no physical or mental impairment, but is treated by an employer as though he/she did.[40]

Qualifying Individuals with Mental Disabilities

The ADA protects only individuals who meet the definition "qualified individuals with a disability."[41] This is defined as someone who "[W]ith or without reasonable accommodations can perform the essential functions of the employment position such individual holds or desires."[42] In order to be "qualified" the individual must satisfy the requirements for the position such as having the appropriate education, experience, skills, licenses and other essential job functions required for the position.[43] Once it is determined that the individual is qualified, the second step is to determine whether or not the individual can perform the essential functions of the position held or desired with or without reasonable accommodations.[44] The EEOC defines "essential functions" as those that "[A]re the fundamental job duties of the employment position that the individual with the disability holds or desires."[45] A job function is determined to be "essential" if: the reason the position exists is to perform the function; the function is highly specialized; removal of the function would fundamentally alter the position.[46]

An employer's judgment as to what is or is not an essential function is given some weight.[47] If an employer has a written job description before advertising or interviewing a prospective employee, that job description will be considered evidence of the essential functions of the job.[48]

Individuals with mental disabilities are not "otherwise qualified" if they engage in conduct that would disqualify an individual who is not protected by the ADA. For example, in *Hogarth v. Thornburg*,[49] the FBI terminated a communications operator who handled classified information after he exhibited acute symptoms of bipolar disorder with paranoid delusions and auditory hallucinations involving the Central Intelligence Agency. The court ruled plaintiff's substantial breaks from reality rendered him unqualified to handle classified information. In *Crawford v. Runyon*,[50] the U.S. Postal Service (USPS) terminated Crawford for threatening to injure or kill his immediate supervisor. Crawford claims that the USPS terminated him "because of his depression and stress-related mental disorders." The court held that an employer is permitted to take appropriate action with respect to an employee who has engaged in deplorable conduct regardless of whether the misconduct is caused by the disability.[51] Ultimately, an employer will not violate the ADA for termination of an

employee based on unacceptable conduct, even if such conduct is directly related to the employee's disability.[52]

An essential function of any job includes avoiding violent behavior that threatens the safety of other employees.[53] An employee who cannot comport with this important workplace rule is not a qualified individual with a disability because complying with such a rule is an essential function of every job.[54] In *Boldini v. Postmaster General U.S. Postal Service*,[55] the court held that the Postal Service did not violate the Rehabilitation Act when it terminated an employee with a personality disorder and major depression who did not follow instructions nor refrain from contentious arguments and insubordinate conduct with supervisors, co-employees or customers. The court reasoned that refraining from such conduct was an essential function of the job, and, therefore, Boldini could not be classified as an "otherwise qualified handicapped individual" pursuant to the Rehabilitation Act. In *Hardy v. Sears, Roebuck & Co.*,[56] an employee was terminated because he threatened and verbally abused co-workers and customers. The court held that although Plaintiff suffered from a bipolar disorder, he could not perform the essential functions of his job, including peaceful interaction with supervisors, other employees and customers. Because he could not perform these essential functions the employer did not violate the ADA, as the employee was not a "qualified individual with a disability."

An individual with a mental disability, who is able to perform the essential functions of the job, with or without reasonable accommodations, may still be excluded from the position if he or she poses a *direct threat* to the health or safety of himself or others.[57] A direct threat must be based on an: "[I]ndividualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge, and/or the best available objective evidence."[58] If an employee's disability poses a direct threat while performing a non-essential function, or if the threat may be removed by a reasonable accommodation, the defense is not available.[59] To determine if a direct threat defense is available, a determination must be made on objective factual evidence, not stereotypes or fears.[60] The objective factors include: "(1) the duration of the risk; (2) the nature and the severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm."[61] In *Lassister v. Reno*,[62] the direct threat defense was used to disqualify a U.S. Marshall with delusional paranoid personality from carrying a gun, an essential job function. However, in *Hindman v. GTE Data Services Inc.*,[63] the court held that the employer had failed to prove, for purposes of summary judgment, that plaintiff was a direct threat just because he had discharged a gun in the workplace, and had a chemical imbalance that caused poor impulse control.

Recently, the EEOC issued an Enforcement Guidance on the subject of psychiatric disabilities.[64] There, the EEOC states: "With respect to the employment of individuals with psychiatric disabilities, the employer must identify the specific behavior that would pose a direct threat. An individual does not pose a 'direct threat' simply by virtue of having a history of psychiatric disability or being treated for a psychiatric disability."[65]

Courts are unwilling to cloak verbal hostility and threats with the protection of the ADA. In *Palmer v. Circuit Court of Cook County, Illinois*,[66] the Seventh Circuit upheld summary judgment for the employer who terminated an employee who verbally abused another employee, threatening to "kick her ass" and "throw her out of her window." After suspension, she sought psychiatric treatment and was diagnosed as having depression and delusional (paranoid) disorder. She was fired after making threatening phone calls: "I'm ready to kill her; she needs her ass kicked and I'm going

to do it...I want Clara bad and I want her dead." The Seventh Circuit acknowledged that plaintiff suffered from a mental illness, but in upholding summary judgment for the employer noted that her termination was based not on her illness, but on her conduct —threatening to kill another employee. The Seventh Circuit made it clear that the ADA does not require an employer to retain a potentially violent employee, stating:

> Such a requirement would place the employer on a razor's edge—in jeopardy of violating the Act if it fired such an employee, yet in jeopardy of being deemed negligent if it retained him and he hurt someone. The Act protects only "qualified" employees, that is, employees qualified to do the job for which they were hired; and threatening other employees disqualifies one.

The court recognized that an employer has a statutory duty to make a "reasonable accommodation" to an employee's disability, *i.e.*, an adjustment in working conditions to enable the employee to overcome his disability if it can be done without undue hardship. Here, the court found that such a duty could not run in favor of employees who commit or threaten to commit violent acts.

Courts treat mental disorders much like alcohol disorders with regard to ADA protection. Therefore, many mental disability cases cite to *Collings v. Longview Fibre Co.*,[67] where the court ruled that employers are entitled to terminate employees for acts of misconduct even when the acts of misconduct are related to a disability. In *Collings*, the plaintiff employees suffered from alcohol disorder and were discharged for drug-related misconduct at the workplace.[68] The Ninth Circuit distinguished between termination based on misconduct and termination based on disability. In this matter the court held that the employer lawfully terminated the employees based on their conduct of violating the employer's substance-abuse policy, and not because of the employee's alcohol-related disorders.

Reasonable Accommodation

Assuming that an employee has a psychiatric disorder, and is therefore a qualified individual with a disability but has not acted in such a way to become unqualified (i.e., engaging in actual threats or violent acts), what must an employer do? First, the ADA does not define "reasonable accommodation," but instead provides examples, some of which have a direct bearing on accommodating an employee with a psychiatric disability: (1) job restructuring; (2) part-time or modified work schedules; (3) reassignment to a vacant position; (4) appropriate adjustment or modifications of examinations, training materials, or policies; (5) similar accommodations.[69]

Persons with mental disabilities often have difficulty in concentrating, dealing with stress and interacting with other people. Consequently, accommodations for such problems are significantly different than accommodating a physical disability. Such accommodations for mental disabilities could reasonably consist of flexibility in hours and duties, closer supervision, emotional support, and/or dealing with co-workers' attitudes.[70] Employers are not required to provide depressed employees with a stress-free environment or immunize him/her from criticism.[71] One accommodation that might be appropriate is to monitor an employee's medication since consistently taking medication creates stability in an employee's behavior.[72]

Providing for time off work is another appropriate accommodation. Many times an employee will ask for time off because she is "depressed" or "stressed." This may be simple, plain language for the medical condition of depression. Such an accommodation would be appropriate. A related reasonable accommodation would be to allow an individual with a disability to change his/her work hours. Many times

medication required to treat psychiatric disabilities create extreme grogginess or other physical side effects. By changing the work hours and assuming no undue hardship, a modified work schedule would be deemed a reasonable accommodation.

Sometimes making physical changes to the workplace may be a reasonable accommodation to an individual with a psychiatric disability. Often the inability to concentrate poses a significant problem to those persons with specific mental disorders. Thus, providing a work space (e.g., room divider, partition, etc.) might be a reasonable accommodation under the circumstances. Adjusting the type of supervision normally given might also be a form of reasonable accommodation. For example, if an employee, because of a mental disability, has problems concentrating and focusing on assigned tasks, it may be a reasonable accommodation for the employee and supervisor to meet on a daily and weekly basis to lay out short- and long-term plans with precise steps to be accomplished each day and for the week.

One particularly troublesome area of reasonable accommodation pertains to conduct. As indicated above, no employer need accommodate violence and direct threats in the workplace. However, there is conduct which does not fall at the outer extreme which is a symptom of a mental disability. This type of conduct must be addressed by the employer. For example, if an employee disrupts the workplace by simply being ill-tempered and shouting at co-employees, he/she must be properly disciplined (i.e., written reprimand or suspension). If the employee then discloses that she has seen a psychiatrist and has been diagnosed with depression, and she further advises the employer that she will need a leave of absence for treatment, under the circumstances, the employer has the right to discipline the inappropriate conduct (i.e., shouting at co-workers and clients). Nevertheless, the employer has a duty to reasonably accommodate her leave of absence, barring undue hardship.

What is an employer to do if he sees an employee's conduct deteriorate, e.g., the employee becomes curt, rude, shouts, etc., all of which appear to have some signs of a psychiatric disorder? If the employer approaches the employee and asks if they may need some accommodation, the employer might later be accused of perceiving that individual as having a disability.[73] On the other hand, if the employer ignores the signs of mental disability, the employer may be accused of not accommodating an obvious disability.[74] Is it enough for the employer to be on notice that an employee has a mental disability for which reasonable accommodation is appropriate if the employee blames his aberrant conduct on "stress"?

While "stress" may be layman's term for depression, it also may have no medical significance whatsoever. Courts have generally concluded that it is not easy to determine if an employee is suffering from a mental disability.[75] When dealing with *potentially* violent behavior, what the employer knows and when the employer knows it is extremely critical. For example, in *Hindman*,[76] the court refused to uphold an employee's termination for bringing an unauthorized weapon on the company's premises because, while the company was deciding whether to terminate the employee, the employee's attorney informed the employer that the employee was suffering from a chemical imbalance. The company did not determine what accommodation could be made (i.e., whether a leave of absence would assist the employee in recovering from the chemical imbalance) and further made no effort to determine whether the employee posed a direct threat. In that case, the court determined that there was a genuine issue of material fact, thus precluding summary judgment.

Employers can take precautionary measures to minimize employee violence. Many of these measures are already in place at many workplaces but are not being utilized, and others warrant consideration on the employer's behalf.

How to Avoid Workplace Violence

Application Procedures

(1) Require every applicant, including applicants for temporary or part-time positions, to complete an employment application form. State on the employment application form that any omission, misrepresentation or falsification of information will result in rejection of the application or termination of employment.

(2) Request information about the applicant's employment history and references. Obtain written permission to contact the applicant's former employers and other references. Include a release so that the applicant's former employer can provide complete information.

(3) Contact former employers and other references to verify the dates of employment, positions held, and ascertain the applicant's reliability, honesty, tendency to engage in disruptive or violent conduct and any other potential problem areas.

(4) Document all information received from former employers and other references, including unsuccessful efforts to obtain such information.

(5) Do not make an offer of employment until the screening process has been completed. If you require applicants to complete a physical examination before employment begins, advise the applicant that any employment offer is contingent upon successful completion of the physical examination.

(6) Administer a pre-hire drug test. Be careful not to disclose any information about the results, as this could lead to possible libel and slander actions.

(7) Conduct a thorough interview. Ask questions that identify a propensity for violence.

Preventive Policies

(1) Include policies related to workplace violence in employee manuals including a zero tolerance policy condemning harassment, intimidation, threats and violence. Include provisions for summary dismissal in the event that threats or violence occurs or if guns are brought into the workplace.

(2) Clearly state that all employee lockers and containers are subject to searches, thus eliminating any expectations of privacy.

Training

(1) Train employees to recognize behavior that could lead to violence such as direct threats, conditional threats or veiled threats.

(2) Train employees regarding conflict resolution and to recognize other problem areas in the workplace, such as an employee's overreaction to an adverse employment situation, obsession with a co-worker, etc.

(3) Employee suspension / terminations are often the source of workplace violence. Structure the termination or suspension in such a way as to minimize negative emotions.

Security Measures

(1) Provide adequate security on company premises, e.g., card keys, etc.

(2) Be sensitive to the fact that former employees or off-duty employees are often the source of workplace violence. Consider a security system that eliminates or reduces the opportunity for violence by former workers.

(3) Establish security procedures whereby threats of violence or violent acts by employees are to be reported immediately to a designated supervisor. Train employees and supervisors to recognize the warning signs of potential violence,

including:

(a) Attendance problems, such as unapproved absences, inconsistent work patterns, poor relationships with co-workers, difficulty concentrating, poor personal hygiene, fascination with weapons, extended depression or claims of "stress."

(b) Evidence of substance abuse.

Develop a crisis procedure for dealing with workplace violence. The procedure should be developed with suggestions of security specialists, trauma experts, local law enforcement, as well as a legal consultant.

Conclusion

The workers' compensation exclusivity ban traditionally barred claims of workplace violence. However, more recently courts are discarding the exclusivity ban and allowing tort claims. Employers must react to this trend through strict compliance with the ADA and Rehabilitation Act. Compliance begins with a thorough understanding of the ADA.

ADA regulations restrict the termination of a qualified, disabled employee, where reasonable accommodations exist. The Act limits an employer's available responses to signs of employee violence. Therefore, the best solution to workplace violence is proactive, and the most effective prevention of workplace violence is in the hiring and application process. Through proper screening of employment applicants, violent workplace outbreaks can be effectively minimized. The minimization of workplace violence creates a safer environment for employees and customers, as well as diminishing the risk of lawsuits.

Ultimately, creative, flexible and prepared employers will have the best opportunity to respond to workplace violence. The numbers confirm what headlines around the country portray regarding employee violence. Workplace violence occurs too frequently to ignore. Employers must be prepared to take active measures that address the safety of customers and employees.

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ENDNOTES:

1. *Bureau of Labor Statistics, U.S. Dep't of Labor*, *Daily Lab. Rep.* (BNA) (1996).
2. Bachman, "Violence and Theft in the Workplace," *Bureau of Justice Crime Data Brief*, U.S. Dep't of Justice, NCJ-148199 (July 1994).
3. Joseph A. Kinney and Dennis L. Johnson, "Breaking Point, The Workplace Violence Epidemic and What to Do About It" (Chicago: *National Safe Workplace Inst*., Sept. 1993), 15.
4. *See, e.g., Ariz. Rev. Stat. Ann.* § 23-1022(A) (West 1998).
5. *See* Pacific Employers Ins. Co. v. Indus. Accident Comm'n, 139 Cal.App.2d 260 (1956) (holding that generally, injuries from an assault by a co-employee are compensable under workers' compensation where the employment increased or contributed to the risk of assault).
6. Workplace assault as used here includes sexual misconduct.
7. *See Ford v. Revlon, Inc.*, 734 P.2d 580 (Ariz. 1987).
8. *See Dickert v. Metropolitan Life Ins. Co.*, 428 S.E.2d 700 (S.C. 1993); Miller v. Lindenwood Female College, 616 F.Supp. 860 (E.D. Mo. 1985) (applying Missouri law).
9. 734 P.2d at 580; *see also Vainio v. Brookshire*, 852 P.2d 596 (Mont. 1993) (holding that employee who alleged sexual harassment by employer did not suffer injuries that fit withing the act's definition of personal injury which included "internal or external physical harm to the body...caused by accident" and therefore exclusivity provision did not apply to workers' compensation act).

10. *See Ford*, 734 P.2d at 586.
11. 800 P.2d 979 (Ariz. App. 1990).
12. *See id.* at 982.
13. *Irvin Investors, Inc.*, 800 P.2d at 982.
14. *See also Hart*, 189 Cal.App.3d at 1420 (male supervisor sexually harassed male employee by grabbing his genitals, attempting to mount him and making sexually suggestive remarks. The Court held that on the assault and battery claims the exception to the exclusivity doctrine applied since the employer was aware of the harassment and did nothing to stop it.); *Cremen v. Harrah's Marina Hotel Casino*, 680 F.Supp. 150 (D. N.J. 1988) (intentional infliction of emotional distress not barred by the exclusivity doctrine of workers' compensation because the incidents of sexual harassment and assaults experienced by an employee were so sufficiently flagrant so as to constitute an "intentional wrong").
15. With the passage of the ADA in 1991, American employees with disabilities were given federal protection against discrimination in private and public employment.
16. A significant portion of those who were victimized by violence identified a real or perceived emotional / mental disorder as a common trait or characteristic of their assailant. "Society for Human Resource Management, SHRM Survey, Reveals Extent of Workplace Violence," *EAP Digest*, Mar.-Apr., 1994 at 25.
17. *See* 42 U.S.C. § 12101 *et seq.* (1998).
18. *See* John Monahan, "Mental Disorder and Violent Behavior," 47 *American Psychologist* 511 (1992).
19. *See* 42 U.S.C. § 12101 *et seq.*
20. *See* 42 U.S.C. § 12102(2) (1998).
21. 42 U.S.C. § 12102(2); 29 C.F.R. § 1630.2(g)(1-3) (1998).
22. *See* 42 U.S.C. § 12102.
23. 29 C.F.R. § 1630.2(h)(1-2) (1998).
24. *See* 29 U.S.C. § 701 *et seq.* (1998).
25. *See* S. Rep. No. 116, 101st Cong., 1st Sess. 18 (1989).
26. *See Criado v. IBM Corp.*, Nos. 97-1341, 97-1342, 1998 WL 282836 (1st Cir. June 5, 1998) (anxiety disorder and depression); *Bultemeyer v. Fort Wayne Community Sch.*, 100 F.3d 1281 (7th Cir. 1996) (paranoid schizophrenia); *Sherback v. Wright Automotive Group*, 987 F. Supp. 433 (W.D. Pa. 1997) (post-traumatic stress disorder); *Hartog v. Wasatch Academy*, 129 F.3d 1076 (10th Cir. 1997) (bipolar or manic-depressive disorder).
27. *See generally Id.*; 42 U.S.C. § 12102.
28. *See EEOC Enforcement Guidance on The Americans With Disabilities Act and Psychiatric Disabilities* (Mar. 25, 1997) (EEOC Notice No. 915.002) (hereinafter "*Guidelines*").
29. 29 C.F.R. § 1630.2(n) (1998); *see Soileau v. Guilford of Maine, Inc.*, 105 F.3d 12 (1st Cir. 1997) (holding that employee's inability to get along with others was not an impairment to trigger ADA coverage).
30. 42 U.S.C. § 12111(8) (1998).
31. 29 C.F.R. § 1630.2(m) (1998).
32. 29 C.F.R. § 1630.2(I) (1998) (emphasis added).
33. 29 C.F.R. § 1630.2(j)(3)(i) (1998); *see also Holihan v. Lucky Stores, Inc.*, 87 F.3d 362, 366 (9th Cir. 1996) (an impairment substantially limiting ones abilities to work does not merely prevent one working a particular job, it may prevent one from working in a class of jobs or broad range of jobs in various classes).
34. *Guidelines, supra* note 50.
35. *See Id.*
36. *See* 29 C.F.R. § 1630.2(k) (1998); *see also* 45 C.F.R. § 84.3(j)(iii)(1998) (same definition under section 504 of Rehabilitation Act); *Pridemore v. Legal Aid Soc'y*, 625 F.Supp. 1171, 1176 (S.D. Ohio 1985) (employee previously hospitalized for depression has record of disability as she was unable to care for herself during that

period).
37. *See Title I of The Americans With Disabilities Act: EEOC's Technical Assistance Manual, Americans With Disabilities Act Manual (Bna)* No. 32, 90:0510 (Feb. 1992).
38. 42 U.S.C. § 12102(2).
39. *See Stradley v. LaFourche Communications, Inc.*, 869 F.Supp. 442 (E.D. La. 1994) (holding that an individual can be classified as a "qualified individual with a disability" where a supervisor perceived the plaintiff as suffering from depression or another mental illness that he believed substantially limited a major life activity, and terminated the plaintiff based on this perception).
40. *See* 29 C.F.R. § 1630.2(1) (1998).
41. 42 U.S.C. § 12111(8); 42 U.S.C. § 12112(1998).
42. 42 U.S.C. § 12111(8).
43. *Id.*; *see also* 29 C.F.R. § 1630.2(m) (1998).
44. *Id.*
45. 29 C.F.R. § 1630.2(n) (1998).
46. 29 C.F.R. § 1630.2(n)(2).
47. *See* 29 C.F.R. § 1630.2(n)(3).
48. *See id.*
49. 833 F.Supp. 1077 (S.D. N.Y. 1993).
50. 79 F.3d 743 (8th Cir. 1996).
51. *Id.* at 743; *see also Maddox v. University of Tenn.*, 62 F.3d 843 (6th Cir. 1995) (holding that an employee may be terminated for egregious conduct even if it is related to or caused by a disability).
52. *See Newland v. Dalton*, 81 F.3d 904 (9th Cir. 1995) (holding that where an employer terminated employee for his conduct of attempting to fire rifle in a tavern: ADA provisions are not violated where employee is an alcoholic, and behaved while on a "drunken rampage").
53. *See generally* 29 C.F.R. § 1630.2(n); *see also Palmer v. Cir. Ct. of Cook County*, Ill. 117 F.3d 351 (7th Cir. 1997), *cert. denied*, 118 S.Ct. 893 (1998).
54. *See generally id.*; *see also Mazzarella v. U.S. Postal Serv.*, 849 F.Supp. 89, 94 (D. Mass. 19944) (holding that the Postal Service did not violate the Rehabilitation Act when it terminated an employee with an explosive personality disorder who in a fit of rage, tore up an office, because avoiding violent behavior is an essential function of the job).
55. 928 F.Supp. 125 (D. N.H. 1995).
56. No. 95-CV-0215-HLM, 1996 WL 735565 (N.D. Ga. Aug. 28, 1996).
57. *See* 42 U.S.C. § 12111(3) (1998); 42 U.S.C. § 12113(b) (1998); 29 C.F.R. § 1630.2(r) (1998); *Doe v. University of Md. Med. Sys. Corp.*, 50 F.3d. 1261, 1265 (4th Cir. 1995).
58. 29 C.F.R. § 1630.2(r).
59. *See U.S. E.E.O.C. v. AIC Sec. Investigations, Ltd.*, 55 F.3d 1276, 1283 (7th Cir. 1995).
60. *See* 29 C.F.R. § 1630.2(r).
61. ___*Id.*
62. 885 F.Supp. 869 (E.D. Va. 1995).
63. No. 93-1046-CIV-T-17C, 1994 WL 371396 (M.D. Fla. June 24, 1994).
64. *See* GUIDELINES, *supra* note 50.
65. *Id.*
66. 117 F.3d at 351.
67. 63 F.3d 828 (9th Cir. 1995); *see also Williams v. Widnall*, 79 F.3d 1003, 1006 (10th Cir. 1996) (holding that the ADA does not require employer to accept deplorable behavior from a disabled employee when the same behavior by non-disabled employee would require discharge); *Maddox*, 63 F.3d at 847 (holding that no ADA violation to discharge disabled employee for misconduct for which non-disabled employee could lawfully be discharged).
68. *See* Collings, 63 F.3d at 832.
69. 42 U.S.C. § 12111(9) (1998); 29 C.F.R. § 1630.2(o)(2) (1998).

70. *See* Deborah Zuckerman, et al., *The ADA and People With Mental Illness: A Resource Manual for Employers* 1 (1993).
71. *See Pesterfield v. Tennessee Valley Auth.*, 941 F.2d 437, 442 (6th Cir. 1991); *Mazzarella*, 849 F.Supp. at 94-95 (employer not required to eliminate all stresses from work environment of employee who suffers from explosive personality disorder).
72. *See Hogarth*, 833 F.Supp. at 1088.
73. *See generally Holihan*, 87 F.3d at 362.
74. *See, e.g., Rodgers v. Lehman*, 869 F.2d 253, 259 (4th Cir. 1989) (suggesting that employer with evidence of employee's mental or emotional problems not ignore need for possible treatment of employee).
75. *See McIntyre v. Kroger Co.*, 863 F. Supp. 355, 358 (N.D. Tex. 1994) ("the court will not impute knowledge of plaintiff's alleged disability upon his employer where no communication of that disability was ever given to his employer. Unlike race, age or physical disability, plaintiff claims that he suffers from depression, a condition not readily apparent to lay persons. Knowledge by an employer that its employee is suffering from depression must therefore arise by other means, *i.e.*, statements by the employee himself or statements from medical personnel familiar with that particular employee's condition"); *see also Nuccio v. Frank*, Civ.A.No. 91-3702, 1992 WL 142406 (E.D. La. June 17, 1992) (employer who knew that employee unable to work due to "stress" had no knowledge of mental disability and no duty to reasonably accommodate).
76. 1994 WL 371396.