

## Applying Conduct Standards to Employees with Disabilities

### 1. May an employer discipline an employee with a disability for violating a conduct standard?

Yes. If an employee's disability does not cause the misconduct, an employer may hold the individual to the same conduct standards that it applies to all other employees. In most instances, an employee's disability will not be relevant to any conduct violations.

**Example:** A blind employee has frequent disputes with her supervisor. She makes personal phone calls on company time, despite being told to stop. She routinely walks away from the job to smoke a cigarette despite warnings that she can do so only on breaks. The employee's actions are unrelated to her disability and the employer may discipline her for insubordination.

### 2. If an employee's disability causes violation of a conduct rule, may the employer discipline the individual?

Yes, if the conduct rule is job-related and consistent with business necessity and other employees are held to the same standard. The ADA does not protect employees from the consequences of violating conduct requirements even where the conduct is caused by the disability.

Whether an employer's application of a conduct rule to an employee with a disability is job-related and consistent with business necessity may rest on several factors, including the manifestation or symptom of a disability affecting an employee's conduct, the frequency of occurrences, the nature of the job, the specific conduct at issue, and the working environment. These factors may be especially critical when the violation concerns "disruptive" behavior which, unlike prohibitions on stealing or violence, is more ambiguous concerning exactly what type of conduct is viewed as unacceptable.

**Example:** An employee's job requires her to spend 90% of her time on the telephone with coworkers. The company's code of conduct requires workers to be respectful towards coworkers. Due to her psychiatric disability, the employee walks out of meetings, hangs up on coworkers on several occasions, and uses derogatory nicknames for coworkers when talking with other employees. The employer first warns the employee to stop her unacceptable conduct, and when she persists, issues a reprimand. After receiving the reprimand, the employee requests a reasonable accommodation. The employee's behavior violated a conduct rule that is job-related and consistent with business necessity and therefore the employer's actions are consistent with the ADA. However, having received a request for reasonable accommodation, the employer should discuss with the employee whether an accommodation would assist her in complying with the code of conduct in the future.

### 3. What should an employer do if an employee mentions a disability and/or the need for an accommodation for the first time in response to counseling or discipline for unacceptable conduct?

If an employee states that her disability is the cause of the conduct problem or requests accommodation, the employer may still discipline the employee for the misconduct. If the appropriate disciplinary action is termination, the ADA would not require further discussion about the employee's disability or request for reasonable accommodation.

If the discipline is something less than termination, the employer may ask about the disability's relevance to the misconduct, or if the employee thinks there is an accommodation that could help her avoid future misconduct. If an accommodation is requested, the employer should refer the employee to the Office of Fair

Practices to begin an “interactive process” to determine whether one is needed to correct a conduct problem, and, if so, what accommodation would be effective. OFP may request appropriate medical documentation to learn if the condition meets the ADA’s definition of “disability,” whether and to what extent the disability is affecting the employee’s conduct, and what accommodations may address the problem.

**Example:** An employee informs her supervisor that she has been diagnosed with bipolar disorder. A few months later, the supervisor asks to meet with the employee concerning her work on a recent assignment. At the meeting, the supervisor explains that the employee’s work has been generally good, but he provides some constructive criticism. The employee becomes angry, yells at the supervisor, and curses him when the supervisor tells her she cannot leave the meeting until he has finished discussing her work. The company terminates the employee, the same punishment given to any employee who is insubordinate. The employee protests her termination, telling the supervisor that her outburst was a result of her bipolar disorder. She says she was trying to get away from the supervisor when she felt she was losing control, but he ordered her not to leave the room. The employee apologizes and requests that the termination be rescinded and that in the future she be allowed to leave the premises if she feels that the stress may cause her to engage in inappropriate behavior. The employer may leave the termination in place without violating the ADA because the employee’s request for reasonable accommodation came after her insubordinate conduct.

#### **4. May an employer require an employee to receive or change treatment for a disability to comply with a conduct standard?**

No. Decisions about medication and treatment often involve many considerations beyond the employer’s expertise.

*Practical Guidance: Regardless of whether employers believe they are trying to help employees who have medical conditions, employers should focus instead on addressing unacceptable workplace conduct. Employer comments about the disability and its treatment could lead to potential ADA claims (e.g., the employer “regarded” the employee as having a disability or the employer engaged in disparate treatment).*

#### **5. Should an employer mention an employee’s disability during a discussion about a performance or conduct problem if the employee does not do so?**

Generally, it is inappropriate for the employer to focus discussion about a performance or conduct problem on an employee’s disability. The point of the employer’s comments should be a clear explanation of the employee’s performance deficiencies or misconduct and what he expects the employee to do to improve.

#### **6. When discussing performance or conduct problems with an employee who has a known disability, may an employer ask if the employee needs a reasonable accommodation?**

Yes. An employer may ask an employee with a known disability who is having performance or conduct problems if he needs a reasonable accommodation. Alternatively, an employer may prefer to ask if some step(s) can be taken to enable the employee to improve his performance or conduct without mentioning accommodation or the employee’s disability.

**Example:** A supervisor knows that an employee has failing eyesight due to macular degeneration. The employee does not want to acknowledge his vision problem, even though the supervisor points out mounting errors that seem connected to the deteriorating vision. The supervisor enjoys working with the employee and knows he is capable of good work, but is uncertain how to handle this situation.

The supervisor may ask the employee if there is anything she can do to assist him. Because the supervisor knows about the deteriorating eyesight, she may (but is not required to) ask if the employee needs a

reasonable accommodation, such as magnifying equipment, software that reads material from a computer screen, or large print. However, the supervisor cannot force the employee to accept an accommodation. If the employee refuses to discuss a reasonable accommodation, the supervisor may continue to address the performance problem in the same manner that she would with any other employee.

*Information for this fact sheet is excerpted from guidance prepared by the Equal Employment Opportunity Commission at <https://www.eeoc.gov/facts/performance-conduct.html>.*

*For additional information, contact the Office of Fair Practices at 703-323-3284 or [ada@nvcc.edu](mailto:ada@nvcc.edu).*