



May 2015

NUHRA Newsletter

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President's Address

Hope everyone is enjoying all of the rain we have been receiving this month! Everything is SO green!

The speakers this year have been great so far! April had some lively discussions with Todd Newman from the UALD. The ½ Day Conference is always educational and fun, and don't forget those credits for HRCI and SHRM recertification!

It is hard to believe it is almost summer already. Just as a reminder, NURHA will be having regular meetings in June and July. August is the annual NUHRA Golf Tournament and September is the State SHRM Crossroads Conference. We hope to see you all at these great events. For more information, you can check out our website at www.nuhra.org. There is a link to the State site where all of the Crossroads Conference information will be located.

We are starting a Social Media Committee for NUHRA and hope anyone with experience or an interest will let us know. We plan to have enough people on the committee that the workload will be spread out so no one person is responsible for all of the planning and maintenance. Please let a board member know of your interest and specialization in this area.

For those just learning about NUHRA, come join us for great networking and interesting and educational speakers. Looking forward to meeting more and more new members as the year goes on!

Veronica Akers
NUHRA President Elect

AFFILIATE OF

SOCIETY FOR HUMAN
RESOURCE MANAGEMENT

Employees with Psychiatric Disabilities Sometimes Pose Direct Threat - But When? by [Allen Smith, SHRM](#), May 6, 2015

Few incidents have illustrated the need to have mentally stable people in safety-sensitive positions as the March 24, 2015, crash of a German wings plane allegedly driven into the ground by a co-pilot who had depression.

“Safety-sensitive positions can be like playing the game of ‘pick your liability,’ which means that the greater good is weighed against confidentiality or ADA [Americans with Disabilities Act] accommodations,” remarked Carolyn Reinach Wolf, an attorney with Abrams Fensterman in Lake Success, N.Y. That said, Wolf noted, “A person with bipolar disorder—manic/depressive illness— or major depression can function the same as anyone else if they are in the right treatment, have insight into needing treatment and follow through with treatment.”

She told SHRM Online, “Many employees have or have had psychological issues, so employers should not be surprised that they need to deal with these issues. Mental illness isn’t limited to depression or bipolar disorder. There are other psychological symptoms which may cause a person to not be safe to perform their job, such as anxiety disorders, personality disorders, mania and other psychotic disorders.

“If an employer has a reasonable belief, based on objective evidence, that an employee is unable to perform an essential function or will pose a direct threat, then the employer may request medical information or require a medical examination,” Wolf said. “In a situation where there are true safety concerns, it is part of a job description that everyone is aware of and is applied across the board, and it is part of the requirement to perform the job that certain medical [and] psychiatric requirements be met, then the employer can ask for a fitness-for-duty exam.” Medical examinations before a job offer are prohibited, however. They are allowed post-offer if required of everyone for that position. Medical examinations are prohibited of employees in general, but there are limited exceptions, such as a fitness-for-duty exam when there are performance problems.

Direct Threat

If a post-offer medical exam results in a job offer being withdrawn, it must be for a reason that is job-related and consistent with business necessity, such as a direct threat to the health or safety of the individual or others, and there must be no reasonable accommodation that could remove the direct threat.

“Direct threat” is a difficult standard to meet, the Equal Employment Opportunity Commission notes in its Technical Assistance Manual on the Employment Provisions (Title I) of the ADA (<https://askjan.org/links/ADAtam1.html>). “An employer must meet very specific and stringent requirements under the ADA to establish that such a ‘direct threat’ exists,” it states.

To demonstrate ‘direct threat’:

- The employer must be prepared to show that there is significant risk of substantial harm.
- The specific risk must be identified.
- It must be a current risk, not one that is speculative or remote.
- The assessment of risk must be based on objective medical or other factual evidence regarding a particular individual.
- Even if a genuine significant risk of substantial harm exists, the employer must consider whether the risk can be eliminated or reduced below the level of a “direct threat” by reasonable accommodation [emphasis in original].

Upcoming Events

May Half Day Conference

When: May 21, 2015

Time: 7:45 a.m. – 1:45 p.m.

Where: Ogden Weber ATC, Cross Hall
200 N Washington Blvd, Ogden

Please RSVP to Ashley Wendt at 801-781-2283 or ashley.wendt@elwoodstaffing.com.



The 2015 NUHRA Golf Tournament will be on Monday, August 10th at Wolf Creek Golf Course in Eden. As always, our tournament will support the NUHRA Student Scholarship Fund at Weber State University.



NUHRA 2015 Calendar

<p>June 18, 2015 Health Care Reform Luncheon Jeremiah's 11:30 – 1:00</p>	<p>July 16, 2015 Progressive Discipline Luncheon Jeremiah's 11:30 – 1:00</p>	<p>GOLF TOURNAMENT August 10, 2015 Wolf Creek Golf Course Eden</p>
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see calendar items in detail:

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Employees with Psychiatric Disabilities Sometimes Pose Direct Threat - But When? *Continued from page 2*

“It often is difficult for employers to assess whether an employee poses a safety threat as a matter of law, and what types of accommodations—if any—are required to be granted,” said Ellen Storch, an attorney with Kaufman Dolowich & Voluck in Woodbury, N.Y. “Certain industries are regulated by federal agencies, such as the Nuclear Regulatory Commission or the Department of Transportation. These agencies have guidelines that require employers to remove employees from the workplace if the person poses a safety threat. In industries without these types of regulations, an employer can lawfully terminate an employee under the ADA, if the employee is unable to show that they are qualified for the job, due to safety concerns.”

But she emphasized, “The burden is on the employer to show the safety threat is significant.”

David Kaufman, an attorney with Calfee in the Cleveland office, said, “Employers should be wary about enforcing rules that [mandate that] some positions, safety-sensitive or otherwise, are off limits to employees with certain medical conditions. A better strategy is to analyze each employee and the particular position in question.”

Off Their Meds

“Employers often wonder whether it is their duty to make sure that employees are on their medication. It is not the employer’s duty,” Wolf noted.

“If an individual who does not take necessary medication behaves inappropriately, that individual can be disciplined for his or her actions. Since it is difficult to negotiate or reason with someone in the midst of a manic or psychotic episode and the person is unlikely to be able to work effectively, the illness would likely need to be stable—person in treatment, on medication usually—to be able to work out a plan of accommodation for them; if not, they need to be in treatment,” she added.

“Employers must balance the rights of disabled employees with the potential risks to co-workers and/or the public,” Storch said. Employers should assess whether someone is qualified to work with or without a reasonable accommodation on a case-by-case basis.

“From a legal perspective, it’s a balance between a possible employee claim for violation of the ADA and a claim for negligent retention by anyone hurt as a result of the disabled employee remaining on the job,” she remarked. “Employers must tread carefully when communicating with an employee who may be suffering from a mental impairment, but not be afraid to ask the questions and take the actions that could save lives.”

Allen Smith, J.D., is the manager of workplace law content for SHRM. Follow him @SHRMlegaleditor (<https://twitter.com/SHRMlegaleditor>).