



**Mental Health  
Accommodations  
in the  
Workplace**

Office of Congressional  
Workplace Rights

Office of the  
General Counsel

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*advancing  
workplace rights,  
safety & health, and  
accessibility in the  
legislative branch*



**Welcome**

**Presenters**

- Hillary Benson, Deputy General Counsel
- Dynah Haubert, Associate General Counsel
- John Mickley, Associate General Counsel
- Christine Keating, Law Clerk

**Overview**

- ADA and FMLA Background
- Case Law
- Other Relevant Statutes
- Resources

# ADA and FMLA Background

**Americans with Disabilities Act (ADA) – “Disability”**

Definition: A physical or mental impairment that substantially limits one or more major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment

- Impairment
- Major life activity
- Substantial limitation

### **ADA – Discrimination**

- Generally prohibits discrimination against qualified individuals on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment
  - Qualified individual (and essential function)
- Discrimination includes not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee
  - Reasonable accommodations
  - Interactive process

### **ADA – Affirmative Defenses**

- Undue hardship – an action requiring significant difficulty or expense
- Direct threat – a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation

### **Family and Medical Leave Act (FMLA)**

- Entitles eligible employees to take up to 12 weeks of job-protected unpaid leave in a 12-month period for specified family and medical reasons
- Prohibits employing offices from interfering with or denying the exercise of FMLA rights, and from discriminating against any person who opposes a practice made unlawful by the FMLA or participates in a proceeding relating to the FMLA
- Eligible employee
- Qualifying reasons for leave
- Employer and employee notice requirements
- Certification

### **Enforcement (ADA and FMLA)**

- OCWR ADR process
- Administrative hearing → review by OCWR Board → U.S. Court of Appeals for the Federal Circuit
- OR federal district court



### Telework as a Reasonable Accommodation

- *Doak v. Johnson*, 798 F.3d 1096 (D.C. Cir. 2015) – Telework and late start times were not reasonable accommodations where in-person meetings during regular business hours were essential job functions
- *Brown v. Austin*, 13 F.4th 1079 (10th Cir. 2021) – Telework and weekend work were not reasonable accommodations because they would have eliminated essential functions of the employee’s job, including reviewing physical case files and collaborating with law enforcement partners who worked a standard schedule
- *Hostettler v. Coll. of Wooster*, 895 F.3d 844 (6th Cir. 2018) – Full-time presence at work must be tied to some other job requirement to be considered an essential function

### Other Reasonable Accommodation Cases

- *Bell v. O'Reilly Auto Enters., LLC*, 972 F.3d 21 (1st Cir. 2020) – “An employee who can, with some difficulty, perform the essential functions of his job without accommodation remains eligible to request and receive a reasonable accommodation.”
- *Sepulveda-Vargas v. Caribbean Rests., LLC*, 888 F.3d 549 (1st Cir. 2018) – Working rotating shifts was an essential function of associate restaurant manager job because giving Plaintiff a fixed schedule would have had the adverse impact of inconveniencing all other assistant managers who would have to work unattractive shifts to compromise
- *McMillan v. City of New York*, 711 F.3d 120 (2d Cir. 2013) – Genuine issue of material fact whether consistent timely arrival to work was an essential function of Plaintiff's case manager position

### Other Reasonable Accommodation Cases, cont'd

- *Hopman v. Union Pac. R.R.*, 68 F.4th 394 (8th Cir. 2023) – Denial of service dog valid because mitigating mental pain is not an employer sponsored program or service covered as benefits or privileges of employment, which (1) refers only to employer-provided services and (2) must be offered to non-disabled individuals in addition to disabled ones
- *Husain v. Power*, 630 F. Supp. 3d 188 (D.D.C. 2022) (Judge Randolph D. Moss) – A plaintiff requesting reassignment as a reasonable accommodation bears the burden to identify suitable vacant positions

### Hostile Work Environment

- *Fox v. Costco Wholesale Corp.*, 918 F.3d 65 (2d Cir. 2019) – Hostile work environment claims are cognizable under the ADA; employee survived summary judgment by identifying specific comments that were repeated for months and introducing evidence that his supervisors witnessed this conduct and did nothing

### FMLA Interference and Abuse of FMLA Leave

- *Lupyan v. Corinthian Colls. Inc.*, 761 F.3d 314 (3d Cir. 2014) – The “mailbox rule” is only a presumption. “In this age of computerized communications and handheld devices, it is certainly not expecting too much to require businesses that wish to avoid a material dispute about the receipt of a letter to use some form of mailing that includes verifiable receipt when mailing something as important as a legally mandated notice.”
- *Zicarelli v. Dart*, 35 F.4th 1079 (7th Cir. 2022) – Denial of FMLA benefits is not required to demonstrate an FMLA interference violation; interference or restraint alone is enough to establish a violation, and a remedy is available if the plaintiff can show prejudice from the violation
- *Garrison v. Dolgencorp, LLC*, 939 F.3d 937 (8th Cir. 2019) – Employees must provide notice that they are in need of FMLA leave to prove interference claim; employee could have read employee handbook when her supervisor told her to in response to request for leave, and could have contacted employer’s third-party leave administrator to initiate the leave approval process but failed to do so, and so employer did not interfere because they were not on notice that she was requesting FMLA leave



### Other Discrimination and Retaliation Cases

- *Millea v. Metro-N. R.R. Co.*, 658 F.3d 154 (2d Cir. 2011) – Standard for materially adverse actions in Title VII retaliation cases applied to FMLA retaliation claim
- *Gibbs v. City of Pittsburgh*, 989 F.3d 226 (3d Cir. 2021) – Labeling psychologists’ approval as a job qualification would equate to using psychological testing as a cover to discriminate against applicant with ADHD
- *Marshall v. Rawlings Co. LLC*, 854 F.3d 368 (6th Cir. 2017) – Cat’s paw liability applicable to FMLA retaliation and ADA discrimination claims, and the “honest belief” of higher-level decision makers is not a defense, as their intent is irrelevant when the bias of lower-level managers they rely on is at issue

### Other Discrimination and Retaliation Cases, cont’d

- *Weaving v. City of Hillsboro*, 763 F.3d 1106 (9th Cir. 2014) – While the ability to interact with others is a major life activity under the ADA, an otherwise competent police officer was not limited by his ADHD in his ability to “interact,” only to “get along with” his coworkers, and therefore he was not covered
- *Jacobs v. N.C. Admin. Off. of the Cts.*, 780 F.3d 562 (4th Cir. 2015) – Deputy clerk with social anxiety disorder was assigned to provide customer service at courthouse front desk and fired shortly after requesting a role with less interpersonal interaction; genuine disputes existed as to whether she had a disability and whether her supervisor knew about her disability and accommodation request before firing her
- *Ingram v. D.C.*, No. CV 18-1598 (RC), 2021 WL 3268379 (D.D.C. July 30, 2021), *aff’d sub nom. Ingram v. D.C. Child & Fam. Servs. Agency*, No. 21-7085, 2022 WL 1769140 (D.C. Cir. June 1, 2022) (Judge Rudolph Contreras) – Employee’s general statement to her supervisor that she “gets anxious at times” was insufficient to demonstrate that the agency was aware she had a mental health diagnosis

### **Misconduct Arising From a Disability**

- *Caporicci v. Chipotle Mexican Grill*, 729 F. App'x 812 (11th Cir. 2018) – Plaintiff's termination for being intoxicated at work was not unlawful, even though her impairment resulted from a change in prescribed medication for her bipolar disorder
- *Krasner v. City of New York*, 580 F. App'x 1 (2d Cir. 2014) – The fact that Plaintiff's insubordination, use of profane language, and threats to coworkers arose from Plaintiff's Asperger's syndrome was immaterial, "inasmuch as workplace misconduct is a legitimate and nondiscriminatory reason for terminating employment, even when such misconduct is related to a disability."

### **Employee Assistance Programs**

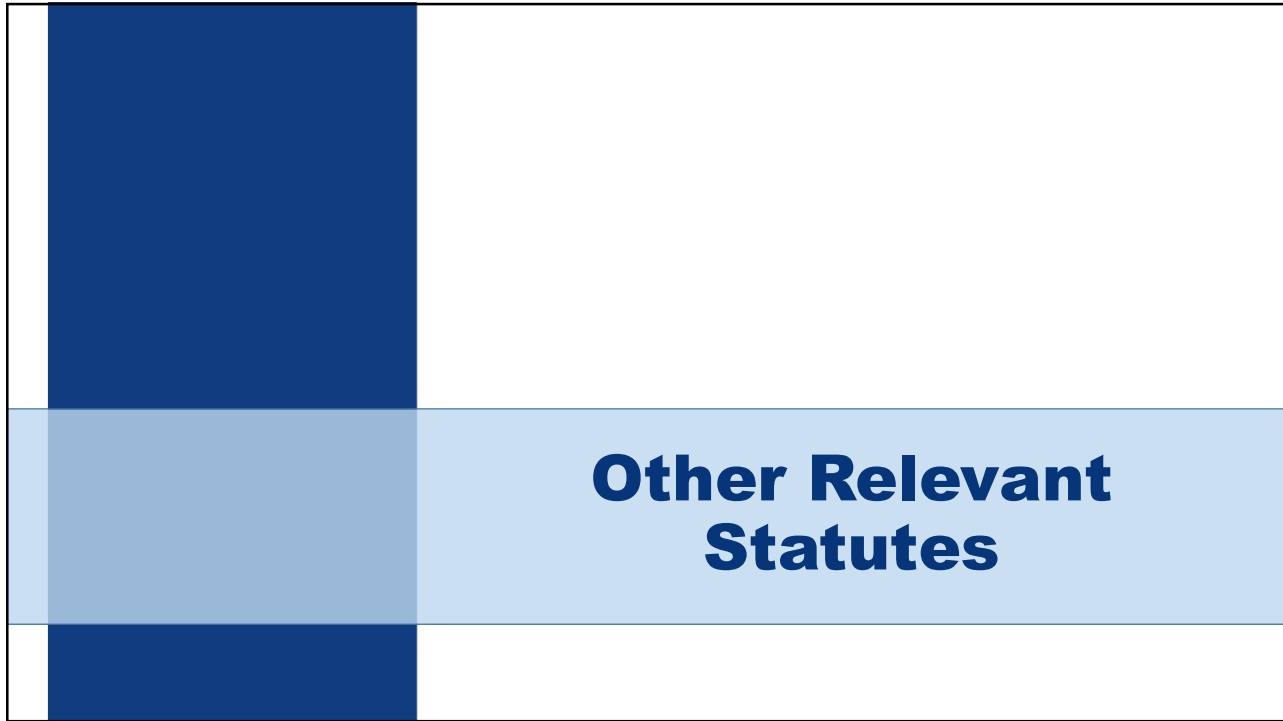
- *Thompson v. City of Charlotte*, 827 F. App'x 277 (4th Cir. 2020) – Employee's use of EAP was not ADA-protected activity
- *Hannah P. v. Coats*, 916 F.3d 327 (4th Cir. 2019) – Supervisors' referral of Plaintiff to EAP did not represent a failure to accommodate, and did not constitute a prohibited medical examination

### **Pregnancy-Related Mental Health Issues**

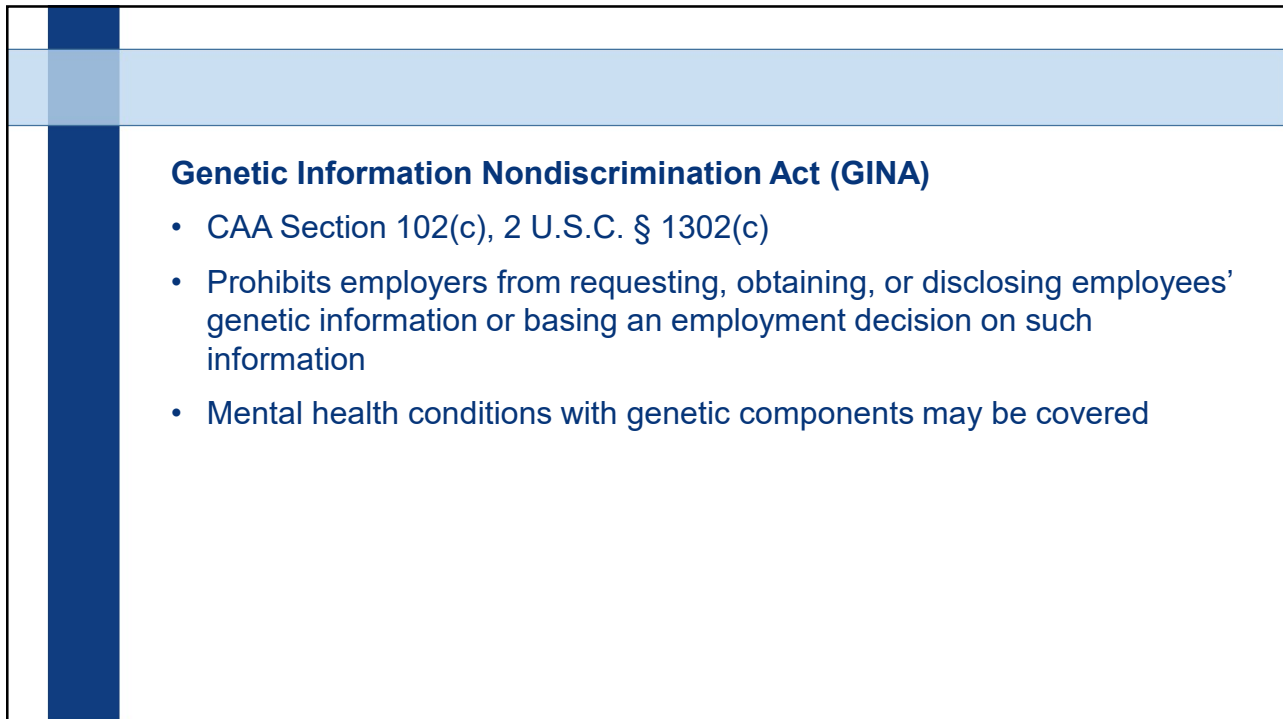
- *Hostettler v. Coll. of Wooster*, 895 F.3d 844 (6th Cir. 2018) – Employee with severe post-partum depression and anxiety requested part-time in-person schedule; genuine issue of fact existed as to whether full-time presence in the workplace was an essential function of the job
- *Trautman v. Time Warner Cable Tex., L.L.C.*, 756 F. App'x 421 (5th Cir. 2018) – Employees must engage in flexible, interactive process when requesting accommodations; Trautman's termination was valid when she took intermittent leave and unexcused absences after she did not get her requested accommodation
- *Blanchet v. Charter Commc'ns, LLC*, 27 F.4th 1221 (6th Cir. 2022) – When an employee's proposed accommodation is medical leave, examining her qualifications on the date of her termination does not indicate whether she is otherwise qualified under the ADA

### **Addiction, Alcoholism, and Drug Use**

- ADA drug use provisions
  - The ADA excludes employees who are currently using drugs from being covered because of their drug use
  - There is a safe harbor for employees who are participating in or have completed rehab or who were erroneously accused of being drug users. 42 U.S.C. § 12114
- *Mauerhan v. Wagner Corp.*, 649 F.3d 1180 (10th Cir. 2011) – Employee who had been drug-free for one month could be “currently using” under ADA exclusion; court noted that this is not a bright-line rule, and case-by-case analysis will rely on employee's prior use and the extent of their recovery
- *Reilly v. Lehigh Valley Hosp.*, 519 F. App'x 759 (3rd Cir. 2013) – Plaintiff lied about drug use during onboarding, and employer learned of his drug use and fired him for dishonesty; Plaintiff argued that he was being terminated for disability related to drug use, but court agreed with employer that dishonesty was the legitimate reason for the termination



## Other Relevant Statutes

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- ### **Genetic Information Nondiscrimination Act (GINA)**
- CAA Section 102(c), 2 U.S.C. § 1302(c)
  - Prohibits employers from requesting, obtaining, or disclosing employees' genetic information or basing an employment decision on such information
  - Mental health conditions with genetic components may be covered

### **Federal Service Labor-Management Relations Statute (FSLMRS)**

- CAA Section 220, 2 U.S.C. § 1351
- During contract bargaining, unions may be able to propose systems to protect the mental health of the bargaining unit
- If management proposes a change to conditions of employment that could adversely affect employees' mental health, the union can likely demand to bargain over appropriate arrangements for affected employees

### **Occupational Safety and Health Act (OSHAct)**

- CAA Section 215, 2 U.S.C. § 1341
- General Duty Clause requires that an employer "furnish to each of [its] employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to [its] employees." 29 U.S.C. § 654(a)(1)
- Potential application to jobs, workplaces, or situations that create working conditions so stressful they give rise to mental health conditions that could lead to severe physical harm or death



**Resources**

- Department of Labor – Mental Health at Work: <https://www.dol.gov/general/mental-health-at-work>
- EEOC – guidance on mental health conditions in the workplace: <https://www.eeoc.gov/laws/guidance/depression-ptsd-other-mental-health-conditions-workplace-your-legal-rights>
- OSHA – mental health awareness: [https://www.osha.gov/sites/default/files/Checklist-Senior\\_Manager\\_508.pdf](https://www.osha.gov/sites/default/files/Checklist-Senior_Manager_508.pdf)
- OSHA – suicide prevention: <https://www.osha.gov/preventingsuicides>

### Resources cont'd

- Job Accommodation Network – Accommodation and Compliance: Mental Health Conditions: <https://askjan.org/disabilities/Mental-Health-Conditions.cfm>
- Health Action Alliance – Sample Accommodations for Mental Health Conditions: <https://www.healthaction.org/sample-accommodations-for-mental-health-conditions>
- Centers for Disease Control – Mental Health in the Workplace: <https://www.cdc.gov/workplacehealthpromotion/tools-resources/workplace-health/mental-health/index.html>
- World Health Organization – Mental Health at Work: <https://www.who.int/teams/mental-health-and-substance-use/promotion-prevention/mental-health-in-the-workplace>

### Articles of Interest

- American Psychological Association – Why Mental Health Needs to Be a Top Priority in the Workplace: <https://www.apa.org/news/apa/2022/surgeon-general-workplace-well-being>
- Harvard Business Review – It's a New Era for Mental Health at Work: <https://hbr.org/2021/10/its-a-new-era-for-mental-health-at-work>

### OCWR Information

- Disability Discrimination: <https://www.ocwr.gov/employee-rights-legislative-branch/unlawful-discrimination/disability/>
- Family and Medical Leave Act: <https://www.ocwr.gov/employee-rights-legislative-branch/family-and-medical-leave-act/>
- Dispute Resolution: <https://www.ocwr.gov/request-assistance/dispute-resolution/>

**Questions?**



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