

By Randi Klein Hyatt, Esq.

Alcohol and the Workplace: Making Sure the Two Don't Mix

Editor's Note: This information is not intended to be legal advice. You should have a licensed attorney review the facts of your specific situation.

Substance abuse, including alcoholism, remains a huge problem in the United States and affects the workplace more often than realized. Alcohol is the single most used and abused drug in America. The most recently published National Survey on Drug Use and Health, conducted in 2003, revealed that nearly 80 percent of the 51 million adult binge drinkers (binge alcohol use is defined as drinking five or more drinks on the same occasion at least once in the past 30 days), and nearly 80 percent of the 15.5 million adult heavy drinkers (heavy alcohol use is defined as drinking five or more drinks on the same occasion on each of five or more days in the past 30 days) were employed in full or part-time positions.

The Americans with Disabilities Act of 1990 (ADA) prohibits employment discrimination against disabled persons, and the medical community has identified alcoholism as a disease for almost 50 years. Although alcoholism is recognized as an impairment, over

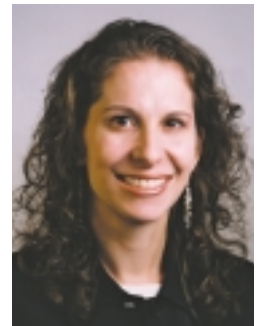
the years, courts have reached conflicting conclusions on whether alcoholism qualifies as a disability.

A disability under the ADA is a physical or mental impairment that substantially limits one or more major life activities of the impaired person. Since alcoholism affects each person differently, whether or not alcoholism is a disability will invariably be analyzed on a case-by-base basis (which is quite the opposite for a blind person who will be presumed to have an ADA qualifying disability).

Even if a person is "disabled" under the ADA, in order to be entitled to the statute's protections, the disabled person must be able to perform the essential functions of his or her position, with or without accommodation. For the disabled-alcoholic employee, this means very specific things because the ADA recognizes that an employer has a right (1) to prohibit the use of alcohol at the workplace by all employees; (2) to prohibit all employees from being under the influence of alcohol at the workplace; and (3) to discipline employees for job performance and behavioral issues, even if the performance issues are directly related to the employee's alcohol use, so long as all employees are disciplined for violating the work rules at issue, regardless of reason.

Despite the ADA's goal of providing disabled employees with equal opportunity for employment success, Congress recognized it would be difficult to question an employer's right and, in many cases, obligation, to take action to ensure that employees are not using alcohol on the job. Therefore, an employer who has a workplace rule against drinking on the job or coming to work under the influence of alcohol, is within its right to discipline the disabled-alcoholic employee for violating this rule, even if the employee violated the rule because of her alcoholism. An employer, however, must be consistent in applying its "no alcohol" policy to all employees, regardless of disability.

In addition, an employer who has workplace policies that require, for example, consistent attendance and punctuality, can likewise discipline an alcoholic employee who is unable to comply with these rules because of the employee's alcoholism. Again, so long as the employer is implementing its policies consistently across the board, the alcoholic employee will have a difficult time questioning whether he



was disciplined for being an alcoholic (*i.e.*, being disabled) as opposed to being disciplined for failure to comply with company policy. In short, the ADA permits employers to hold alcoholic employees to the same job performance and behavior standards that other employees must follow.

Practically speaking, if an alcoholic employee comes forward to an employer and requests a reasonable accommodation, the employer first would need to determine, perhaps with the help of counsel and the employee's health care provider, whether the employee's alcoholism is a covered disability. Assuming so, the employer might work with the employee to provide an altered work schedule or time off for the employee to participate in a rehabilitation program, to the same extent an employer permits time off or flex time for employees with other conditions who need treatment or rehabilitation (*i.e.*, cancer survivors). The employer, however, still retains the right to control work rules. If the employee continues to violate legitimate workplace rules, despite the accommodation, the employer may still discipline the disabled employee.

Although alcoholism is a disease to which an employer can respond compassionately, such consideration does not mean that an employer must disregard its own rules, employee safety and employee morale. In the end, the ADA does not strip an employer of its right to regulate the workplace and keep it alcohol-free. ■

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