

Employment Rights for People with Bipolar Disorder

Attorney Katharine Gordon has provided some information on the legal rights of people with bipolar disorder under the ADA.

When we think of the Americans with Disabilities Act (ADA), we might think of physical modifications to buildings, expensive lawyers, and complicated trials. But this law also gives people with bipolar ways to get fair treatment in the workplace. By learning a bit about your employment rights under this law, you can focus on excelling in your chosen career, rather than being sidetracked by ignorance, stereotypes, and stigma.

Here are a few things that you may not know about bipolar disorder and the ADA:

It is now clear that people with bipolar disorder are protected under the ADA in employment. Prior to 2008, there was often a battle of the experts to prove that a person with bipolar disorder had a severe enough impairment to be protected. This discouraged many from asking for their rights to be respected under this law in the first place. Unfortunately, companies would fire people for having bipolar disorder and then, in next breath, argue that bipolar wasn't a real disability therefore it was legal to fire people for reasons related to their bipolar disorder.

This changed with the passage of the Americans with Disabilities Act Amendments Act of 2008, which made it easier to establish disability. The Equal Employment Opportunity Commission, the agency responsible for enforcing this law, has made it clear in official regulations that **bipolar disorder should generally be covered as a disability for the purposes of protection in employment:** "It should easily be concluded that the following types of impairments will, at a minimum, substantially limit the major life activities indi-

cated:...major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia substantially limit brain function."

Job applicants should never be asked whether they have bipolar disorder (or any other disability) until a conditional offer has been made. Rather, employers are only allowed to ask these types of questions after everything else has been done, including interviews, character investigations, and reference checks. Then they can ask disability-related questions, but only if they ask this information of all people hired for this position, and if they keep the answers to these questions separate from the rest of the employee's file. For more information, see the Job Accommodations Network's resources for job seekers and the EEOC's guidance on Job Applicants and the Americans with Disabilities Act.

It is usually your choice as to whether you disclose your condition once you are on the job. If you have found successful treatment for your condition and it does not impact you in the workplace, then you might find it best not to reveal this, especially because of continuing stigma against people with bipolar disorder. However, there are some limited circumstances in which disclosure may be helpful or required. This includes if your employer has a reasonable belief based on objective evidence that a disability will

interfere with your ability to safely or fully perform your job. You can read more about issues of disclosure in the EEOC's *Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities and Questions and Answers: Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act.*

You can ask for reasonable accommodations if you think you need them. However, in this case, you will generally need to provide documentation from a health care provider about your condition. You should work with your health provider to provide documentation that emphasizes your ability to do your job fully and safely rather than inadvertently raise concerns.

"Society's accumulated myths and fears about disability and disease are as handicapping as the... limitations that flow from actual impairment."

—US Supreme Court

The Job Accommodations Network has a very helpful guide *Employees' Practical Guide to Negotiating and Requesting Reasonable Accommodations under the Americans with Disabilities Act (ADA)*, which includes sample documentation. Its *Accommodation and Compliance Series: Employees with Bipolar Disorder* provides suggestions for accommodations that might help people with bipolar disorder maintain stamina and attention throughout the workday, stay organized, work effectively with supervisors, and handle stress and change. Medical professionals may be interested in a *Journal of the American Medical Association* article, "The Americans with Disabilities Act: Shattered Aspirations and New Hope."