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may involve no more than scheduling some time off for the employee to resolve his condition. And that's just the approach that is prudent for Andy in the story that opened this article. "I would recommend giving Andy a leave of absence, but require him to bring in a doctor's certification that he is indeed suffering from depression," says Nobile. "Then at the end of the leave require him to bring in another certification from the same doctor certifying that he is able to return to work, with or without accommodation."

Sometimes the employee can help you find a sensible accommodation. "The law requires you to sit down with the employee and have an open discussion about the range of accommodations that might be possible," says McDonald. "Be prepared to work with the employee to come up with an accommodation such as an adjustment to the work schedule, or time off for surgery or treatment or therapy, or an adjustment in job duties."

Not all of the employee's suggestions may be feasible. "You do not have to accept the employee's suggestion for an accommodation but you do have to go into the discussion with an open mind," says McDonald. "Engage in good faith negotiations. Keep conducting an interactive process with the employee until an effective accommodation is reached, or you decide that no reasonable accommodation can be made, or the employee stops cooperating."

"The most common mistake made by employers is acting on stereotypes," says Gary Phelan, a partner with the New York and Stamford, CT, offices of Outten & Golden, the nation's largest employment law firm representing individuals. Phelan is co-author of the book *Disability Discrimination in the Workplace*. "Ideas surrounding an employee's disability or impairment are often wrong and are often the product of paternalism," he says. You can avoid such stereotypes by opening up a dialog with any employee who claims a disability.

Small employers covered

While the ADA applies to employers with 15 or more workers, many state laws are more inclusive. "Smaller employers are likely covered under state laws where the number of employees is often lower," says Gary Phelan, a partner with the New York and Stamford, CT, offices of Outten & Golden, the nation's largest employment law firm representing individuals. "For example, employers with as few as three workers

are covered in Connecticut; with as few as four in New York state."

And while the federal law limits damages to \$300,000 for compensatory and punitive damages, there is no cap on compensatory or punitive damages under many state and local laws.

Phelan offers four points of advice to employers: "The principle things are: 1) Be open minded. 2) Treat your employees as you would like your employer to treat you. 3) Don't act based on stereotypes. 4) recognize that sometimes because of the effects of an impairment the individual cannot do the job."

Finally, solidify all of these concerns in a set of company guidelines that are designed to avoid legal friction and poor personnel management. "The critical thing is make sure you have policies and procedures in place to enable employees to come forward and raise issues of their conditions, and to engage in interactive assessments with the employees to develop accommodations," says Nobile. "And document all of these steps to provide support if you are questioned later."

Handling the dangerous employee

Suppose you have an employee who begins to act and talk erratically. Perhaps Sandra claims that she is being pursued by aliens. Maybe she even arrives at work bleeding from her scalp, claiming that her pursuers caught up with her. Your other employees may be frightened by her and ask you to remove her from the workplace.

What can you do?

"You still have a direct threat defense," says Nobile. "If Sandra presents a direct threat to herself or others, that provides a defense for removing her from the place of employment."

Taking swift action to terminate Sandra does carry risk. "Employers are put in a precarious position: Do you want to face an ADA claim or a lawsuit for negligent retention if the employee harms others in the workplace? Speaking for myself, I think if I were an employer I would rather risk the ADA claim."

In many cases the best solution, says Nobile, is to put the employee out on administrative leave at full pay, and require her to undergo an assessment by a psychiatrist who can make a determination as to whether she is a threat to herself or others.

Get more information

For more information on disability discrimination go to the web site of the U.S. Equal Employment Opportunity Commission (EEOC) at www.eeoc.gov. Click on the menu item "Employers" for a set of documents. **WRN**