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Addiction and Mental Health Issues Impacting Lawyers and Law Firms

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Over the past few years, media outlets have shed an important spotlight on a growing concern among lawyers and law firms that, until recently, has seldom been discussed: the prevalence of substance abuse, alcoholism, and mental illness in the legal profession. In 2016, the *New York Times* published an article describing reports that one in three practicing lawyers are problem drinkers and many others suffer from depression and anxiety.[3] The following year, another *Times* article described the prevalence of drug use and alcohol among lawyers and the tragic death of a talented attorney who succumbed to his addiction.[4] In 2018, the legal industry was shocked again by the death of a law firm partner who took his own life while under significant work-related stress. The lawyer's wife penned a heartfelt article describing her shock and pain, bringing attention to the issue of mental illness and depression in the legal profession.[5]

These articles, among others, have raised awareness of how legal protections apply to lawyers with substance abuse or mental health issues and what employers can do when confronted with employees who are experiencing such challenges. Employers, including law firms and others in the legal industry, are not only considering their duty to accommodate under applicable laws, but are also proactively addressing those issues in the workplace. The significance of these issues was highlighted by the American Bar Association ("ABA"), which, in September 2018, launched a campaign aimed to improve the mental health and well-being of lawyers.[6] This article explores

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[3] Elizabeth Olsen, *High Rate of Problem Drinking Reported Among Lawyers,* N.Y. Times, Feb. 4, 2016, https://www.nytimes.com/2016/02/05/business/dealbook/high-rate-of-problem-drinking-reported-among-lawyers.html

[4] Eilene Zimmerman, *The Lawyer, the Addict,* N.Y. Times, July 15, 2017, https://www.nytimes.com/2017/07/15/business/lawyers-addiction-mental-health.html

[5] 'Joanna Litt, *'Big Law Killed My Husband': An Open Letter From a Sidley Partner's Widow*, The American Lawyer, Nov. 12, 2018, https://www.law.com/americanlawyer/2018/11/12/big-law-killed-my-husband-an-open-letter-from-a-sidley-partners-widow/. *See also* Jeanne Sahadi, *He made his way to the top of 'Big Law.' Then his drinking almost brought him down*, CNN Business, Jan. 24, 2019, https://www.cnn.com/2019/01/24/success/lawyers-drinking-alcoholism/index.html.

[6] *ABA launches pledge campaign to improve mental health and well-being of lawyers,* ABA (Sept. 10, 2018), https://www.americanbar.org/news/abanews/aba-news-archives/2018/09/aba-launches-pledge-campaign-to-improve-mental-health-and-well-b/. *See also Working Group to Advance Well-Being in the Legal Profession,* ABA (Jan. 3,

employers' legal obligations and practical steps that can be taken when employers are presented with employees who have drug, alcohol, or mental health related disabilities.

I. RECENT TRENDS IN DRUG AND ALCOHOL USE

National studies show the prevalence of drug abuse, alcohol abuse, and mental illness, which have been increasing in recent years.[7] Yet, despite these concerning trends, the National Institute of Mental Health ("NIMH") observed that "research on psychiatric epidemiology shows that mental disorders are common throughout the United States, affecting tens of millions of people each year, and that only a fraction of those affected receive treatment."[8]

Under the purview of the Department of Health and Human Services ("HHS"), the Substance Abuse and Mental Health Services Administration ("SAMHSA") conducts an annual National Survey on Drug Use and Health ("NSDUH"). The most recent survey, released in 2017, found that approximately 36.9% of adults aged 18 to 25 were binge drinkers and 9.6% were heavy alcohol drinkers (defined as engaged in binge drinking on 5 or more of the past 30 days). Another 6.2% of adults aged 26 or older were heavy drinkers. The same year, approximately 28.5 million adults used illicit drugs. That includes roughly 1 in 4 young adults (24.2%) and 1 in 10 adults aged 26 or older (9.5%). The survey found that 6 million people 12 years or older had misused non-opioid prescription drugs and 11.4 million more abused opioids (including heroin).[9]

The 2017 NSDUH survey also found that an estimated 46.6 million (18.9%) adults aged 18 or older suffered from a mental illness. While that number does not represent a significant increase from 2016, it is higher than in past years. The percentage of young adults with serious mental illnesses increased in 2017, and rates of all mental illness were higher than any year from 2008 to 2016.[10]

Mental illness and substance abuse often go hand in hand. The NSDUH study found that in 2017, 3.4% of all adults had both a mental illness and at least one substance abuse disorder. The combination of addiction and mental illness can lead to dire consequences, including thoughts of suicide.

Other studies have focused on substance abuse and mental illness in the workplace. Those studies that have analyzed of a diverse group of occupations show – perhaps not surprisingly – that depression and mental illness are not only present in the workplace, but may be exacerbated by workplace stress. In fact, depression has been linked

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2019), https://www.americanbar.org/groups/lawyer_assistance/working-group_to_advance_well-being_in_legal_profession/.

[7] *See* Nat'l Surv. on Drug Use & Health, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2017 National Survey on Drug Use and Health,* Substance Abuse & Mental Health Serv. Admin., https://www.samhsa.gov/data/report/2017-nsduh-annual-national-report; *see also* Ctrs. for Disease Control & Prevention, *Depression Evaluation Measures,* (Apr. 1, 2016) http://www.cdc.gov/workplacehealthpromotion/health-strategies/depression/evaluation-measures.html (last visited Jan. 4, 2019); Am. Psychol. Ass'n, *Coping with Stress at Work,* http://www.apa.org/helpcenter/work-stress.aspx (last visited Jan. 2019).

[8] *Statistics,* Nat'l Inst. of Mental Health, http://www.nimh.nih.gov/statistics/index.shtml (last visited Jan. 8, 2019).

[9] Nat'l Surv. on Drug Use & Health, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2017 National Survey on Drug Use and Health,* Substance Abuse & Mental Health Servs. Admin., https://www.samhsa.gov/data/report/2017-nsduh-annual-national-report

[10] *Id.* at pp. 38-39.

directly to work stressors and losses in productivity.[11] The American Psychiatric Association found in a 2013 survey that while more than 33% of workers in America experienced chronic work stress, only a quarter of them believed employers provided adequate support.[12]

The legal profession has recently been the subject of several studies on mental illness and substance abuse. In 2016, the Hazelden and Betty Ford Foundation and the American Bar Association ("ABA") released the most comprehensive industry focused report to date on substance abuse and mental health in the legal profession. That report analyzed responses from 12,825 licensed practicing attorneys across 19 states and found significant rates of substance abuse and mental health illness. Roughly 21% of lawyers reported being problem drinkers, 28% reported experiencing mild or more serious depression and 19% reported anxiety. Notably, 74% of attorneys who responded skipped over questions regarding drug use. Of those who answered, 5.6% reported used cocaine, crack and stimulants, 5.6% used opioids, 10.2% reported using marijuana; and almost 16% reported using sedatives. Meanwhile, 85% of attorneys surveyed reported using alcohol in the previous year, as compared to 65% in the general population.[13]

A 2018 survey conducted by ALM Intelligence sent confidential online surveys to 200 large law firms and asked those firms about substance abuse and mental health in their workplaces. Of the 30 firms that responded, 90% agreed or strongly agreed that alcohol abuse occurred at the firm, 48% answered that drug abuse occurred, 86% agreed that depression occurred, and 93% agreed that there is anxiety among employees. When asked to rank the potential negative consequences of substance abuse and mental health problems among lawyers, the firms ranked "threat or damage to clients" first and "threat or damage to reputation" second.[14]

II. LEGAL PROTECTIONS

Employees with disabilities, including mental health disabilities, are protected from discrimination under federal, state and local law. In New York, for instance, the Americans with Disabilities Act along with the New York State and City Human Rights Laws prohibit discrimination on the basis of disability, and further require employers to accommodate employees with disabilities to enable them to perform the essential functions of their job. Below are summaries of the key provisions of those laws relating to disability discrimination and the duty to accommodate.

A. The Americans with Disabilities Act

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[11] Ctrs. for Disease Control & Prevention, *Depression Evaluation Measures,* (Apr. 1, 2016) http://www.cdc.gov/workplacehealthpromotion/health-strategies/depression/evaluation-measures.html (last visited Jan. 4, 2019).

[12] Am. Psychol. Ass'n, *Coping with Stress at Work,* http://www.apa.org/helpcenter/work-stress.aspx (last visited Jan. 2019).

[13] Patrick Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, Journal of Addiction Medicine, 2016; Benjamin GA, Darling E., Sales B., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers,* Intl. Journal of Law Psychiatry, 1990; 13:233–246.ISSN 0160-2527

[14] Patrick Krill, *ALM Survey on Mental Health and Substance Abuse: Big Law's Pervasive Problem,* law.com, (Sept. 14, 2018), https://www.law.com/2018/09/14/alm-survey-on-mental-health-and-substance-abuse-big-laws-pervasive-problem/.

The Americans with Disabilities Act ("ADA") is a federal law that prohibits discrimination against "qualified individuals with disabilities" in the workplace.[15] Under the ADA an individual is considered disabled if he or she: (i) has a physical or mental impairment that substantially limits one or more "major life activities"; or (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. "Major life activities" are defined to include "concentrating, thinking, communicating and working," [16] all activities that can be affected by mental illness. "Major life activities" also include "major bodily functions" such as neurological and brain function.[17]

A "qualified individual" is an individual who meets the requirements of his or her job and can perform the essential functions of the position with or without a reasonable accommodation.[18] Though alcoholism and drug addiction can both be protected under the ADA, the statute treats them differently. The ADA does not protect individuals who are currently using illegal drugs under any circumstances. However, a recovered or recovering addict who is no longer using drugs and who is both "qualified" and can meet the definition of "disabled" may be protected.[19] In contrast, a person who currently uses alcohol may not automatically be denied accommodations. If that person is an alcoholic, and currently using alcohol, he or she may still be entitled to accommodations if the employee is qualified to perform the essential functions of the job. [20] That said, the ADA allows employers to hold that employee to the same performance standards as other employees.[21] In that regard, unsatisfactory behavior such as absenteeism, tardiness, or insubordination on the job related to the employee's drug or alcohol abuse need not be tolerated if similar performance or conduct would not be acceptable of other employees.[22]

An employee whose poor performance or conduct is attributable to the "current" use of illegal drugs is not covered under the ADA and the employer therefore has no legal obligation to provide a reasonable accommodation to that employee.[23] However, where a recovering addict is not currently using illegal drugs, the employee may be covered by the law and the employer may be required to provide a reasonable accommodation.[24]

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[15] 42 U.S.C. § 12101, *et seq.*

[16] 42 U.S.C. § 12102(2)(A).

[17] 42 U.S.C. § 12102(2)(B).

[18] *The Americans with Disabilities Act: Applying Performance and Conduct Standards to Employees with Disabilities,* EEOC, https://www.eeoc.gov/facts/performance-conduct.html (last modified Dec. 20, 2017).

[19] The ADA states that "[T]he term 'individual with a disability' does not include an individual who is currently engaging in the illegal use of drugs," but does not exclude an individual who (1) "has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use; (2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or (3) is erroneously regarded as engaging gin such use, but is not engaging in such use." 42 U.S.C. § 12210 (a), (b).

[20] *EEOC Technical Assistance Manual: Title I of the ADA,* (Jan. 1992), https://askjan.org/publications/ada-specific/Technical-Assistance-Manual-for-Title-I-of-the-ADA.cfm.

[21] 42 U.S.C. §12214(c)(1). ("A covered entity . . . may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee.")

[22] *The Americans With Disabilities Act: Applying Performance and Conduct Standards to Employees With Disabilities"* EEOC, https://www.eeoc.gov/facts/performance-conduct.html#fn83 (last modified Dec. 20, 2017).

[23] *Id.*

[24] *See* 42 U.S.C. § 12111(9) (1994); 29 C.F.R. § 1630.2(o)(2) (1999).

Under the ADA, once an employer is on notice of the potential need for an accommodation, the employer has the duty to engage in an interactive process to determine the best means, if any, of accommodating the employee's disability. Generally speaking, an employee must indicate that an accommodation is needed in order to trigger the interactive process.

There are, however, certain parameters that govern the accommodations process. Among other things, an accommodation sought by an employee is not considered "reasonable" if it eliminates an essential job function or reduces the standards and/or expectations of the job.[25] Employers are also not required to grant the specific accommodation requested by the employee so long as the accommodation that is provided effectively accommodates the employee's disability.[26] A "reasonable accommodation" might include, for example, modifying work schedules for the employee so that the employee can attend a treatment program, modifying workplace policies, or reassigning an employee to a vacant position. Even if reasonable, employers are not required to make an accommodation if the accommodation would cause undue hardship to the employer. Factors to be considered when determining whether an accommodation causes undue hardship include: (i) the nature and cost of the accommodation; (ii) overall financial resources, size, number of employees, and operations of both the facility responsible for instituting the accommodation and the covered employer in whole; (iii) the effect on expenses and resources of the location; and (iv) the impact of the accommodation on the operation of the location.[27]

In 2016, the EEOC published guidance on mental health issues in the workplace in response to an increase in the number of EEOC charges concerning mental health, and to clarify rights and obligations relating to mental health.[28] The guidance emphasizes key areas of concern for employers with employees who present with mental health issues. Among those areas for concern is deciding whether an employee can, in fact, perform the essential functions of his/her job, or whether the employee poses a safety risk. In making that assessment, the EEOC explains, employers should not rely on "myths or stereotypes" about mental health conditions, but instead must gather "objective evidence" to make such determinations. The guidance also makes clear that mental health conditions need not be permanent or severe to warrant a reasonable accommodation, and that examples of qualifying mental health conditions may include major depression, PTSD, bipolar disorder, schizophrenia, and obsessive compulsive disorder, among others. The EEOC points out that reasonable accommodations of mental health issues may include changes such as altered break and work schedules, quiet office space or devices, changes in supervisory methods, and permission to work from home.

B. State and City Law Obligations

The New York State and City Human Rights Laws define disability more broadly than the ADA to include a "physical, medical, mental, or psychological impairment," or a history or record of such impairment. Notably, these laws do not require that the impairment substantially limit a major life activity as required by the ADA.[29] In fact, recent amendments to the New York City Human Rights Law ("NYCHRL") expand upon the obligation to engage in an interactive dialogue with disabled employees.

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[25] 29 C.F.R. § 1630.9(e).

[26] 29 C.F.R. § 1630.15(b)(2), (d).

[27] 29 C.F.R. § 1630.2(p)(2).

[28] *Depression, PTSD, & Other Mental Health Conditions in the Workplace: Your Legal Rights,* EEOC, https://www.eeoc.gov/eeoc/publications/mental_health.cfm, (last visited Jan. 8, 2019).

[29] *See* Exec. Law § 292(21); N.Y.C. Admin. Code § 8-102.

In June 2018 the New York City Commission on Human Rights, which enforces the City law, released enforcement guidance intended to provide employers with direction on various disability-related topics.[30] Until recently, the NYCHRL did not expressly require an employer to engage in any particular process when responding to an employee's request for an accommodation. However, a January 2018 amendment to the NYCHRL requires covered employers to engage in a "cooperative dialogue" with individuals who may be entitled to a reasonable accommodation.[31] The guidance makes clear that an employer is obligated to engage in the interactive process not only when an individual requests an accommodation, "but also when the covered entity '*should have . . . known'* about the individual's disability, regardless of whether the individual requested an accommodation."[32]

In fact, these recent amendments make it an "unlawful discriminatory practice" for covered employers not to "engage in good faith in a written or oral dialogue [about the needs]" of persons who may be entitled to an accommodation.[33] The law also mandates that "[u]pon reaching a final determination at the conclusion of a cooperative dialogue," employers must provide "a written final determination [to the person requesting an accommodation] identifying any accommodation granted or denied."[34] This requirement of a written determination does not exist under federal or state law. The City law also provides that an employer's determination that there is no reasonable accommodation that would allow a disabled individual to perform the essential functions of his/her job "may only be made after the parties have engaged, or the covered entity has attempted to engage, in a cooperative dialogue."[35]

The City Commission's guidance also explains that under the New York City law, "disability" refers to an individual who is "recovering or has recovered" and is currently free of alcohol, drug, or other substance abuse.[36] The guidance is consistent with a New York Court of Appeals' 2017 decision holding that the "plain language" of the New York City Administrative Code protects only those who are recovering or have recovered from alcoholism, and are "currently free from alcohol abuse."[37] The Commission also clarified that employers are not permitted to ask questions on job applications that elicit information concerning an applicant's history of drug or alcohol abuse or mental illness."[38]

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[30] N.Y.C. Comm'n on Hum. Rts., *Legal Enforcement Guidance on Discrimination on the Basis of Disability,* https://www1.nyc.gov/assets/cchr/downloads/pdf/NYCCHR_LegalGuide-DisabilityFinal.pdf, (last visited Jan. 8, 2019).

[31] N.Y.C. Admin. Code § 8-107(28).

[32] N.Y.C. Comm'n on Hum. Rts., *Legal Enforcement Guidance on Discrimination on the Basis of Disability,* https://www1.nyc.gov/assets/cchr/downloads/pdf/NYCCHR_LegalGuide-DisabilityFinal.pdf, (last visited Jan. 8, 2019), *citing* N.Y.C. Admin. Code § 8-107(15)(a). The New York State Human Right Law does not impose this obligation on employers, and discusses reasonable accommodations only for "*known* physical or mental limitations," or "*known* disabilities." *See* N.Y. Exec. Law § 296(3)(a) (emphasis supplied).

[33] Local Law No. 59 § 8-102 (2018).

[34] Local Law No. 59 § 8-107 (28)(d) (2018); N.Y.C. Admin. Code § 8-107(28)(d).

[35] N.Y.C. Admin. Code § 8-107(28)(e).

[36] N.Y.C. Admin. Code § 8-102(16)(b).

[37] *Makinen v. City of New York*, 30 N.Y.3d 81, 89 (2017).

[38] *In* re *Comm'n on Hum. Rts. v. A Nanny on the Net, LLC & Amy Hardison*, 2017 WL 694027, at *4 (N.Y.C Comm'n on Hum. Rts. Feb. 10, 2017). There are certain scenarios where an employer is permitted to inquire about an applicant's disability status. Where the employer is participating in an affirmative action program for the disabled, or where a federal, state or local law or regulation requires certain information to assess a candidate's eligibility. In such situations, the employer must state the purpose for the inquiry, that it is voluntary, and that any information will remain confidential. N.Y.C. Comm'n on Hum. Rts., *Legal Enforcement Guidance on Discrimination on the Basis of Disability*,

And, the Guidance explains that employers should refrain from asking current employees about disabilities, except: (1) when an employer has reason to believe that a disability is rendering an employee unable to perform essential requisites of a job; (2) when an employer is concerned the employee may pose a direct threat to the safety of themselves, coworkers, or the public; or (3) the employer is engaging in a cooperative dialogue with the employee regarding possible reasonable accommodations.[39]

III. COURT DECISIONS INVOLVING SUBSTANCE ABUSE AND MENTAL HEALTH

The following are a few notable court decisions involving substance abuse and mental health issues.

A. Substance Abuse

Because individuals who are currently using illegal drugs are not protected under the ADA, the question of whether someone is "currently" a drug user is often a subject of litigation. Courts have not established a bright line rule defining "current" in this context, but some courts have found that "current" may extend to cases where someone has not used an illegal substance in weeks or even months. The Fourth Circuit has noted that "the ordinary or natural meaning of the phrase 'currently using drugs' does not require that a drug user have a heroin syringe in his arm or a marijuana bong to his mouth at the exact moment contemplated," only that "[he or she used] in a periodic fashion during the weeks and months prior to discharge."[40] Courts reason that "current" can mean weeks or months because an individual can be "currently" addicted to a drug used in the recent past.[41] In that regard, an individual may use drugs only on occasion but nonetheless be addicted.

B. Mental Illness

A number of ADA cases involving mental illness focus on anxiety and depression, and whether an employee has trouble working alongside coworkers.[42] In *Palmerini v. Fidelity Brokerage Servs., LLC*, for example, the plaintiff claimed he was discriminated against when, after repeatedly clashing with managers and being diagnosed with PTSD and depression stemming from his workplace treatment, he requested the employer move him to a different building or location. Fidelity had already provided plaintiff with two transfers and after the second he only waited one day before claiming it, too, was unacceptable.[43] The Court noted that "the ADA does not require employers to

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June 2018, at 38-39, https://www1.nyc.gov/assets/cchr/downloads/pdf/NYCCHR_LegalGuide-DisabilityFinal.pdf (last visited Jan. 8, 2019).

[39] N.Y.C. Comm'n on Hum. Rts., *Legal Enforcement Guidance on Discrimination on the Basis of Disability*, June 2018, at 43-44, https://www1.nyc.gov/assets/cchr/downloads/pdf/NYCCHR_LegalGuide-DisabilityFinal.pdf (last visited Jan. 8, 2019). The EEOC defines "direct threat" as "a significant risk of substantial harm to the health or safety of others that cannot be eliminated or reduced by reasonable accommodations." 41 C.F.R. § 60-741.2(e).

[40] *Shafer v. Preston Mem'l Hosp. Corp.*, 107 F.3d 274, 278 (4th Cir. 1997); *see also Brown v. Lucky Stores, Inc.*, 246 F.3d 1182, 1188 (9th Cir. 2001) (employee was not a former user solely for enrolling in a rehabilitation program).

[41] *Cornerstone Residence, Inc. v. City of Clairton*, No. 18-1239 U.S. App. LEXIS 36709, at *6 (3d Cir. Dec. 31, 2018) ("That the *use* occurred in the preceding days or weeks does not alter one's status as a *current addict*.").

[42] *Palmerini v. Fidelity Brokerage Servs., LLC*, No. 12-CV-505-JD, 2014 WL 3401826, at *3 (D.N.H. July 9, 2014) (employee had PTSD); *Schwarzkopf v. Brunswick Corp.*, 833 F. Supp. 2d 1106, 1109 (D. Minn. 2011) (employee had depression and general anxiety).

[43] *Palmerini*, 2014 WL 3401826, at *7.

provide a stress-free work environment or a work environment without aggravation," in concluding that plaintiff's third request was not reasonable.[44] While this and other cases show courts' willingness to find that conditions like periodic work-related PTSD could qualify as disabilities, they also show a reluctance to require that employers transfer employees away from coworkers or supervisors who are potential stressors, and that there are limits to the accommodations employers will be required to make.[45]

Courts have shown similar reluctance toward forcing employers to reassign employees or allow them to work from home, and have often viewed attendance as an essential job function.[46]

IV. A NOTE ON ATTORNEY ETHICAL OBLIGATIONS

There are also ethical implications when lawyers become aware that other attorneys may be under the influence of drugs or alcohol or subject to mental impairments. Neither the ABA Model Rules of Professional Conduct nor the New York Rules of Professional Conduct contain a rule that directly addresses substance abuse by attorneys. However, both sets of rules prohibit lawyers from representing clients when their ability to represent the client is "impair[ed]" by a "physical or mental condition."[47] Such circumstances may trigger a duty to report the attorney's conduct, [48] or advise clients that the attorney is not able to continue with the representation.[49] Under the applicable rules and ethics opinions, impaired lawyers have the same obligations as other lawyers—mental impairment does not lessen a lawyer's obligation to provide clients with competent representation. Therefore, law firms navigating these

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[44] *Id*.

[45] *See, e.g.*, *Whalen v. City of Syracuse*, No. 5:11-CV-0794, 2014 WL 3529976, at *7, (N.D.N.Y. July 15, 2014) (holding that the employer is not obligated to guarantee that plaintiff with depression and anxiety will never have contact with a triggering colleague); *Palmerini*, 2014 WL 3401826, at *8 (holding that an employer is not obligated to an grant an employee multiple reassignments because he cannot get along with his managers); *Moore v. CVS Rx Servs.*, 142 F. Supp. 3d 321, 341 (M.D. Pa. 2015) (holding that it is unreasonable for an employee suffering from postpartum depression to request a new position secluding her from "run-ins" with other people.).

[46] *See Treanor v. MCI Telecomms. Corp.*, 200 F.3d 570, 575 (8th Cir. 2000) (holding that the employer was not required to create a part-time position for an employee suffering from depression); *See Blackard v. Livingston Parish Sewer Dist.*, No. 12-704-SDDD-RLB, 2014 WL 199629 , at *6 (M.D. La., Jan. 15, 2014) (holding that employer need not switch an employee suffering from bipolar disorder, depression, anxiety and ADHD to the day shift since employee could not consistently arrive to work on time).

[47] *Rule 1.16: Declining or Terminating Representation,* ABA (Dec. 3, 2018), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_16_declining_or_terminating_representation/; *Rule 1.16: Declining or Terminating Representation*, N.Y. Rules of Professional Conduct (June 1, 2018), https://www.nysba.org/DownloadAsset.aspx?id=50671

[48] *See* ABA Opinion 03-429; *Rule 8.3: Reporting Professional Misconduct,* ABA (Aug. 17, 2018), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_3_reporting_professional_misconduct/ (last visited Feb. 5, 2019). Model Rule 8.3(a) provides: "A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority."

[49] *Rule 1.4: Communications,* ABA (Aug. 16, 2018), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_4_communications/ (last visited Feb. 5, 2019). Under Model Rule 1.4(b), "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

issues should be aware of the ethical consequences, and potential obligations, that may arise when an attorney is under the influence of drugs or alcohol or has a mental health impairment.

V. ADDITIONAL GUIDANCE FOR LAWYERS AND LAW FIRMS

Given the recent attention on drug and alcohol use and mental health issues in the legal profession, and the ABA and New York City Commission's guidance on these topics, employers in the legal industry should consider taking affirmative steps to address these issues before they arise.

Among other things, employers should consider steps to support those who experience drug and alcohol issues in the workplace. This proactive approach was endorsed by the ABA in 2017 as part of its National Task Force on Lawyer Well-Being. The taskforce used the Hazelden/ABA study as a launching point and published recommendations called "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change."[50] The document contains dozens of recommendations tailored not only to the legal community in general, but also for judges, regulators, legal employers, law schools, bar associations, lawyers' professional liability carriers, and lawyer assistance programs. The recommendations broadly promote measures such as encouraging and facilitating help-seeking behaviors, fostering collegiality and respectfulness in the workplace, enhancing attorney sense of control, de-emphasizing alcohol at social events, monitoring for and supporting recovery from substance abuse, and beginning a dialogue about suicide prevention. Law firms can, and should, also train their partners and professional staff to be aware of the potential for mental health issues to arise at work, rather than wait for a struggling colleague to ask for help.

In addition to these proactive measures, employers should also ensure that they are prepared to navigate the issues presented by employees with addiction or mental health illnesses. This includes being prepared to engage in a cooperative dialogue and to offer reasonable accommodations when and as needed. Legal employers should also familiarize themselves with the ethical issues that can arise in these circumstances, such as the duty to report in certain circumstances. Legal services providers can also consider offering mental health counseling and/or employee assistance programs to attorneys who may be struggling with drug, alcohol, or mental health issues. Having the right resources in place, and making lawyers aware of those resources, can go a long way toward helping them deal with issues before they become unmanageable.

By developing a workplace that is inclusive and supportive, training lawyers and staff to be mindful of these issues, and offering the right support and accommodations when needed, law firms, and other employers, can help mitigate the impact of addiction and mental health issues in the workplace.

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[50] *Report from the National Task Force on Lawyer Well-Being,* ABA, (Nov. 9, 2018), https://www.americanbar.org/groups/lawyer_assistance/task_force_report/.