

Feature Article

IMPLEMENTING REASONABLE ACCOMMODATIONS USING ADR UNDER THE ADA:  
THE CASE OF A WHITE-COLLAR EMPLOYEE WITH BIPOLAR MENTAL ILLNESS

Peter David **Blanck** Jill Handley Andersen Eric J. Wallach James P. Tenney<sup>II</sup>

Copyright © 1994 by the American Bar Association; Peter David **Blanck**, Jill

Handley Andersen, Eric J. Wallach and James P. Tenney

INTRODUCTION

Increasing numbers of employers appear to be turning to alternative dispute resolution (ADR) to defuse potential employment litigation and comply with the Titles I and IV of the Americans with Disabilities Act of 1990 (ADA). This move toward ADR under the ADA largely results from the realization that employers found to have discriminated under Title I of the act could be liable to employees for compensatory and punitive damages, for the costs of reasonable accommodations and other remedies, and for fees to attorneys and experts. Moreover, although under Title I monetary awards for intentional employment discrimination are limited--with caps ranging from \$50,000 to \$300,000-- employees may recover additional monies through tort or workers' compensation actions.

Indications are that employers also are using ADR under the ADA to enhance equality of job opportunity. For example, dispute resolution processes are being used that lead to cost-effective reasonable accommodations enabling qualified employees with disabilities to work.<sup>1</sup>

Yet fashioning an ADA compliance strategy with reasonable accommodations that satisfy the needs of qualified employees with disabilities working under different job standards and corporate policies is challenging.<sup>2</sup> This is particularly so when qualified employees reveal "hidden" disabilities such as epilepsy, cancer, sleep disorders, HIV disease, and mental illness.<sup>3</sup>

---

<sup>II</sup> Peter David **Blanck**, a professor of law and of psychology at the University of Iowa College of Law, 431 Boyd Law Building, Iowa City, IA 52242, is a senior fellow of the Annenberg Washington Program, and is a commissioner for the American Bar Association Commission on Mental and Physical Disability Law. Jill Handley Andersen serves as assistant counsel to AEGON USA Realty Advisors, 4333 Edgewood Road, N.E., Cedar Rapids, IA 52499. Eric J. Wallach leads the Employment Practice Group and James P. Tenney is an associate at Rosenman & Colin, 575 Madison Avenue, New York, NY 10022.

<sup>1</sup> See, for example, P.D. **Blanck**, "The Americans with Disabilities Act: Putting the Employment Provisions to Work," Annenberg Washington Program (1993); P.D. **Blanck**, "The Americans with Disabilities Act: Issues for Back and Spine Related Disability," 19:1 Spine (1994) at 103-107.

<sup>2</sup> See J. Wou, "Self-Policing Can Pay Off for Companies," Wall Street Journal (Sept. 8, 1993) at B5, which notes that regulatory agencies tend to treat companies with compliance programs more leniently.

<sup>3</sup> See L.R. Rubenstein, *Mental Disorder and the ADA: Implementing the Americans With Disabilities Act* (L.O. Gostin and H.A. Beyer, eds.) (1992) at 209; P.D. **Blanck**, C. Schoenberg, & J. Tenney, "AIDS-Related Benefits

To illustrate the potential benefits of using ADR under the ADA in providing reasonable accommodations, this article presents the case of a white-collar employee with bipolar mental illness.<sup>4</sup> The discussion identifies eight key "decision points" in the accommodation process that are relevant to employers, persons with disabilities, human resource personnel, and in-house and external employment counsel.

Although this case reflects the experiences of an actual employee, the facts have been changed to protect the participants' privacy and to address evolving concepts related to ADA compliance.

Readers also should note that employers, employees, and attorneys often face work place situations in which the facts, the case law, or Equal Employment Opportunity Commission (EEOC) rules and guidelines are not completely clear. The discussion highlights many issues of concern, often when definitive conclusions cannot be made.

## THE CASE OF MIKE JOHNSON

Mike Johnson was a thirty-five-year-old senior account executive for Perfect Technologies, Inc., a large nationwide manufacturer and distributor of sophisticated communication systems. By 1993, Mike had held this position for five years and was considered an excellent employee. He consistently exceeded his sales goals and earned more than \$80,000 annually in salary and commissions, largely by developing accounts with national clients.

After a recent sales campaign, Mike checked himself into a mental health facility, where he was diagnosed as having bipolar mental illness (sometimes called manic-depression). Mike immediately reported his illness to his supervisor and applied for short-term disability benefits. After a three-week period of hospitalization and rest, Mike told his supervisor that he was "ready to return to work" and that he should "stay this way as long as he continued outpatient treatment." Mike returned to work, and after one month on the job appeared to be performing satisfactorily.

Mike's supervisor then noticed that most evenings Mike worked extremely late and that occasionally Mike did not arrive at work until lunch time. After being back on the job for two months, Mike told his supervisor, "I feel stressed out again and wish there were an alternative."

In neither this nor subsequent discussions with his supervisor did Mike refer to himself as a person with a disability or request any specific accommodations. Indeed, Mike exceeded his sales quota for his first two months after returning to work. Out of a genuine concern for Mike's health and well-being, however--and in recognition of the business's need to retain Mike's national accounts--Mike's supervisor discussed Mike's situation with Perfect's management. Perfect's managers decided to consult the firm's human resources staff and employment law

---

Equation: Soaring Costs Times Soaring Needs Divided by Federal Law," 9:4 AIDS Policy and Law (1994) at 1-7. U.S. Department of Justice and Equal Employment Opportunity Commission, Americans with Disabilities Act Technical Assistance guidelines (BNA) (1992) at 90, 0233, 0235-0236.

<sup>4</sup> See "Should the CEO Allow Dan to Return to Work?" Harvard Business Review (May 1994) at 24 for another case study of an employee with bipolar disorder and advice on how his employer should have handled his disability.

counsel to chart an appropriate course of action. Out of those discussions emerged eight decision points.

### **Point 1. Ignore or Address Mike's Disability**

When Mike used his disability leave, and when his supervisor suspected Mike had a disability, what should Perfect have done?<sup>5</sup> Perfect recognized it had an obligation to provide Mike with reasonable accommodations if he identified himself as a qualified person who needed them. But was Perfect required to accommodate Mike's disability only if Mike formally announced that he had a disability and requested specific accommodations? When Mike spoke about feeling "stressed out" and wishing he had an "alternative," should Perfect have initiated further dialogue with Mike about his condition?

The EEOC regulations and at least one court opinion indicate that employers have no duty to accommodate a hidden disability if an employee denies it exists.<sup>6</sup> Yet whether Perfect had to consider making accommodations for Mike without his declaring that he needed any is not absolutely clear. Given the firm's knowledge of Mike's recent hospitalization, were Mike's comments to his supervisor sufficient to trigger Perfect's obligation to at least assess a need for accommodations under the ADA? If so, when should Perfect have known that the ADA had been implicated? Several Perfect executives believed that these sounded too much like "questions for a jury," so the firm's management decided to find out more about Mike's situation. Management also believed that by initiating a dialogue with Mike, the firm might avoid any losses in Mike's substantial productivity attributable to an unaccommodated disability.<sup>7</sup>

If Mike's supervisor had not discussed the matter with Perfect's management, ADA-related complications might have arisen later. For example, another supervisor or executive might have viewed Mike's absences as "unexcused" and sought to terminate him.<sup>8</sup> Similarly, other supervisors might have resisted granting Mike any "special privileges," reasoning that he had to adjust to the daily stress at Perfect as his co-workers did. Some might have even had doubts about the initial decision to hire Mike, fearing reprisals from senior management for relying on someone "with a disability" who could cost the firm substantial losses in business revenue.

After these discussions with management, Mike's supervisor received the support of Perfect's human resource staff and legal counsel and was directed to talk with Mike to understand how Mike was doing and to ask if the company could do anything to help him. Fortunately, the good

---

<sup>5</sup> This issue is further complicated by Perfect's duty to comply with the Family Medical Leave Act of 1993, which gives employees the right to take up to twelve weeks of leave in a twelve-month period for "serious health conditions," but a discussion of this law is beyond the scope of this article. See Table 1, Section IV (A)(7).

<sup>6</sup> See, for example, *Braun v. American International Health & Rehabilitation Svcs., Inc.*, 846 P.2d 1151 (Or. Sup. Ct. 1993), 17 MPDLR 386, interpreting an Oregon civil rights statute ruling that an employer had no duty to facilitate employee's recognition of her alcoholism.

<sup>7</sup> "[G]ood management alone may warrant accommodating an employee with a mental illness who does not fall strictly within Title I's protection." D. Zuckerman, K. Debenham, & K. Moore, *The ADA and People with Mental Illness: A Resource Manual for Employers* at 9 (1993).

<sup>8</sup> See E. Marcus, "Mental Disabilities under the ADA: Potential litigation Problems of Americans with Disabilities Act," *Risk Management* (Feb. 1994) at 49-51, which notes that unpredictable and irregular attendance seems not to be tolerated under the ADA and not to constitute reasonable accommodation, although attendance standards may have to be modified to accommodate certain types of disabilities.

relationship Mike had enjoyed with his supervisor over the past few years set the stage for a successful dialogue. During a closed-door meeting, Mike explained his condition to his supervisor at length and in lay terms. Mike also provided his therapist's name to the supervisor and consented in writing to have his medical records related to bipolar disorder released for the confidential use of Perfect's medical consultant.

Mike explained that his psychiatrist was prescribing a combination of medications and varying the levels of medication. Although his mental illness had stabilized somewhat over the past month, Mike and his psychiatrist continued to monitor and adjust the drug therapy. According to Mike's psychiatrist, Mike would be less likely to undergo severe shifts between mania and depression if he continued the drug therapy. Mike would, however, continue to experience a wider range of euphoria and depression than would persons without bipolar disorder. Mike was attending group therapy and individual counseling sessions twice each week to help him function with bipolar disorder.

### **Point 2. Get the Facts**

Much preparation and fact finding had to be completed before Perfect could begin a formal dialogue with Mike. The firm first had to determine whether Mike's condition qualified for protection under the ADA.

Mike was considered to have a disability covered by the ADA because he had a mental impairment that substantially limited the "major life activity" of work.<sup>9</sup> A review of a standard physician's reference book substantiated Perfect's initial perception that Mike's condition was a covered mental impairment. "Mental impairment" is a broad term that includes mental retardation, organic brain damage, learning disabilities, and mental illnesses. In addition, Mike would have been protected by the ADA even if he had no apparent disability as long as Perfect "regarded" him as having a disability.

Perfect next assessed the ways that Mike's disability substantially limited his work. With Mike's consent, Perfect sought outside medical guidance on the specific nature of Mike's condition. The factors addressed included its severity, expected duration, and long-term impact. The consultant confirmed Mike's representation to his supervisor that his mental illness was "permanent." The firm also learned that when he was in a manic cycle of his bipolar illness, Mike's work was substantially limited by his tendency to create grandiose schemes and to overload his schedule. His working until late at night may have reflected the beginning of such a manic phase. When depression set in, Mike would likely wake up late for work, miss appointments and project deadlines, and experience fatigue.

Although Mike came in late some days during his first two months back on the job, he was able to adjust his appointment schedule. According to his psychiatrist, Mike had experienced relatively mild manic and depressive cycles after he returned to work. Moreover, he had recently landed a new national account. Nothing about Mike's behavior or his prognosis therefore

---

<sup>9</sup> See E. Marcus, "Mental Disabilities under the ADA: Potential litigation Problems of Americans with Disabilities Act," *Risk Management* (Feb. 1994) at 49-51, which notes that unpredictable and irregular attendance seems not to be tolerated under the ADA and not to constitute reasonable accommodation, although attendance standards may have to be modified to accommodate certain types of disabilities.

suggested to the company's physician that Mike posed a risk of substantial harm to himself or other employees.

Although Perfect acknowledged Mike's disability, Mike was not entitled automatically to protection under the ADA's Title I unless he could show that he was a "qualified individual with a disability." Perfect believed that a judgment had to be made as to whether Mike could perform the essential functions of his job with or without reasonable accommodation. After reviewing Mike's annual job evaluations prior to the onset of his illness, as well as his recent accomplishments, Perfect concluded that Mike could perform in a highly satisfactory manner. Therefore, Perfect next had to determine whether it could make reasonable accommodations to help Mike perform his essential job tasks.

### **Point 3. Identify Reasonable Accommodations**

Mike's supervisor was the initial source of information about potential reasonable accommodations. The supervisor and Perfect's employment counsel met to discuss the ADA generally and the nature of Mike's disability specifically. A formal medical diagnosis by Mike's therapist and by the physician consultant guided this discussion. Mike's supervisor also was given a description of bipolar mental illness written in lay terms, in part to dispel common myths associated with the illness.

Mike's supervisor learned that Mike experienced periods of mania and depression; that symptoms of mania included abundant energy, an unrealistic belief in one's abilities, increased risk taking, and irritability or distractibility; and that symptoms of depression included pessimism, sleep problems, decreased energy, social withdrawal, and difficulty making decisions. Mike's supervisor also learned that treatment for bipolar disorder is generally effective and that persons with this condition function for long periods free of debilitating symptoms. After obtaining this information, Mike's supervisor worked with legal counsel and human resource staff to identify the essential functions of Mike's position by reviewing Mike's written job description.

Identifying the type and scope of potential reasonable accommodations was the next task. As Perfect assessed Mike's disability, several questions emerged: What symptoms of bipolar disorder affected Mike's ability to meet his sales projections--that is, to be "qualified" for his job? Did Mike's illness pose a threat to himself or to co-workers outside the office (e.g., while driving on long sales trips)? Would the costs of any reasonable accommodations pose an undue hardship to Perfect?

Because Perfect had never before sought to formally accommodate an employee with a mental illness, it decided to hire an ADA consultant to help determine appropriate accommodations for Mike. Management believed that a neutral, external expert would be beneficial.

### **Point 4. Assess the Need for Expertise**

Perfect had to decide what type of consultant to retain and how best to do this. The telephone directory had no category entitled "ADA Consultant," although Perfect's in-house counsel knew of several ADA consultants who regularly made educational presentations. Should the consultant have training in medicine, workers' compensation law, occupational therapy, or

employment law? Did the consultant need extensive knowledge about Perfect's business?

Perfect's management suspected that no matter how much independence the consultant would have according to the retainer agreement, if a situation arose that was not resolved using ADR and that led to litigation, a jury likely would view the consultant's recommendations as being "pro-employer." After all, Perfect, not Mike, would pay the consultant's fees. Furthermore, the consultant might be perceived as motivated to please Perfect in the hope of obtaining future work or positive references from the firm. Management concluded that if the consultant could function as a neutral problem solver by finding workable solutions and inspiring Mike's trust, the firm would improve its chances for a "win-win" situation: A productive employee would return to work, litigation would be avoided, and the experience would provide a corporate model for addressing employees' disabilities.

Once the consultant was selected, a written contract was prepared that guaranteed the consultant's independence and neutrality. According to the contract's terms, the consultant's objective was to stimulate a problem-solving dialogue. In addition, the contract stated that the consultant could recommend accommodations that Perfect did not wish to use, and that pursuant to the ADA, Perfect could pick from a range of reasonable accommodations. Perfect was, however, required to have a business-related reason for rejecting any particular accommodation.

#### **Point 5. Assess Cost Factors and Potential Undue Hardship**

After analyzing Mike's job description, the ADA consultant developed a list of potential accommodations that Mike's supervisor, the firm's management, and counsel reviewed to evaluate each accommodation's cost, feasibility, and relevance to the ADA's undue hardship provision. Mike's supervisor lacked authority to consent to several proposed accommodations, such as keeping Mike's salary constant during the transitional period (including his commissions) or temporarily reducing Mike's expected sales levels. These decisions had to be made by management in light of Perfect's financial and staffing resources. Management's decision to accommodate Mike's disability was intended to reflect Perfect's commitment to comply with the ADA in the context of sound business practice.

Management, Mike's supervisor, and the ADA consultant reached a preliminary consensus on the choice of accommodations, subject to discussions with Mike. The cooperation and assent of Mike's supervisor in this process was crucial. If Mike's supervisor had not supported the consultant's proposals, a constructive discharge could have occurred--that is, Mike's supervisor could have consciously or unconsciously made Mike's work environment hostile. This would not have been conducive to productivity or to the ADR process and could have further aggravated Mike's disability.

The group concluded that no new staff support position was needed to accommodate Mike's disability. The company was neither prepared nor required under the ADA to hire a full-time assistant to "shadow" Mike as he performed his duties.

The consultant did, however, suggest as an accommodation that Perfect accord Mike extended peer support in his job activities. Because Mike traveled for prolonged periods and could suffer a relapse while on the road by not eating regularly, having difficulty sleeping, and feeling

increased stress. The consultant recommended that during a six-week transitional period the firm should send a co-worker--preferably of Mike's choice--to accompany Mike on extended national sales campaigns. The company supported this accommodation, as it provided assurance that Mike's interactions with customers continued to be positive and productive.

#### **Point 6. Initiate a Problem-Solving Dialogue**

After management reviewed the consultant's prospective accommodations and selected those it was willing to implement, a formal problem-solving dialogue with Mike was initiated. A meeting was arranged at a time convenient for Mike. To reduce Mike's apprehension, the firm informed him in advance and in writing why the meeting was being held, who would attend the meeting, and the anticipated agenda. Mike was encouraged to bring a family member, friend, or advisor to the meeting. Mike was also given a written list of the consultant's proposed accommodations in advance of the meeting so that he would have time to review these and to think of others to suggest.

At the consultant's suggestion, legal counsel and human resource staff did not attend the initial problem-solving dialogue. Counsel's attendance could lead Mike to infer that the company had something other than ADR on its agenda, such as documenting a legal record in favor of Perfect, which might in turn cause Mike to make only guarded comments. Management also recognized that Mike's supervisor needed to manage the program of accommodation on a daily basis. This required Mike's supervisor to be empowered to lead the dialogue. Because the supervisor was not experienced in ADR techniques, the consultant provided a basic briefing on mediation skills.

#### **Point 7. Develop an "Accommodation Plan"**

The accommodation meeting began with a discussion of the principles that governed the relationship between Perfect and Mike. Management recognized that Mike had a disability that affected his job performance and assured him that Perfect was committed to offering him reasonable accommodation. Management assured Mike that his privacy would be respected throughout the accommodation process and reaffirmed Perfect's intent to comply with the ADA.

The initial meeting focused on what was necessary to fulfill the essential demands of Mike's position. Mike and his supervisor reviewed each job task and came to an agreement about which tasks were essential functions. The accommodations that the consultant had proposed prior to the meeting provided a springboard for discussion. Once Mike and his supervisor agreed to potential accommodations, they established a time line for implementing them. Finally, with the consultant's assistance, Mike and his supervisor developed a method for evaluating the effectiveness of the accommodation plan, which appears in Table 1 (see page 464).

The consultant clarified that the accommodation plan was not a contract of employment, but was "more like a road map." The plan was put in writing and signed for several reasons. First, this made the plan specific and thorough. Second, this made the plan tangible, so Mike and Perfect could refer to it whenever questions arose. Finally, this substantiated the company's actions in providing reasonable accommodations. The accommodation plan facilitated a positive work environment for Mike, his supervisor, and their colleagues so that they could ensure that customers were served in a timely, cost-effective manner.

Because Mike's job responsibilities were cyclical--consisting of periods of intense performance and travel followed by periods of inaction--the accommodation plan included "short-term" and "long-term" accommodations and allowed for a gradual re-introduction of Mike's work load. The plan reaffirmed Perfect's "open-door" policy and provided that Mike and his supervisor were to meet weekly, at an established time, to discuss matters including sales calls, sales proposals, Mike's new initiatives, and other essential tasks Mike performed. The goal was to empower Mike and his supervisor to make adjustments to the accommodation plan when necessary. The initial term of the accommodation plan was six weeks, which permitted flexible responses and an evaluation.

The plan's long-term accommodations were to continue as long as Mike remained employed at Perfect. One accommodation was flexible scheduling, which enabled Mike to obtain appropriate medical care and attend group therapy sessions. Other long-term accommodations included providing Mike a private office to minimize interruptions during his periods of stress, and agreeing that Mike's supervisor's would not consider the six-week transitional period when evaluating Mike's performance at his next annual review.

#### **Point 8. Evaluate the Accommodation Plan**

On the closing date of the initial six-week accommodation plan, Mike, his supervisor, and the ADA consultant met to evaluate its effectiveness. If all of the plan's goals had been met, discontinuing the short-term accommodations was an option. In Mike's case, however, discontinuing the short-term accommodations would have required him to resume all of his previous responsibilities. After some discussion, the ADA consultant suggested that the short-term accommodations not be eliminated too quickly. Therefore, a second six-week accommodation plan was implemented, under which Mike's productivity requirements increased by increments and his responsibilities grew, but the prior short-term safeguards remained in place.

Based on the cyclical nature of Mike's illness and the tendency of persons with bipolar mental illness to undergo relapses, the ADA consultant suggested that requiring Mike to assume his full responsibilities at an early juncture could lead to a pattern of intense performance followed by no performance. Therefore, after the twelve-week transition period ended, a third accommodation plan was developed jointly that eliminated the short-term accommodations and retained certain long-term accommodations. The evaluation of the three accommodation plans included a written analysis by Mike, his superior, and the ADA consultant.

#### **Analysis**

Just a few years earlier, Perfect might "solved" Mike's case by terminating him immediately upon his return from hospitalization. If he had been unable to find subsequent employment, Mike's lost wages during the rest of his life easily could have exceeded two million dollars.

Had Perfect terminated Mike without any attempt--or only a sham attempt--to accommodate his condition, Mike could have filed an ADA or state law claim, forcing Perfect to defend itself at a



cost of several hundred thousand dollars.<sup>10</sup> Mike's claims would have resulted in a "battle of the experts," with Mike alleging damages emanating from his termination and Perfect arguing that Mike's personality traits, sporadic attendance, and mental illness did not allow him to function under the ordinary work pressures of the job. Perfect also would have incurred training costs in replacing Mike, which may exceed \$100,000 for an account executive at Mike's level. Clients who had developed strong relationships with Mike and were displeased by his termination might have resigned their accounts with Perfect.

Perfect's decision to employ ADR techniques was relatively inexpensive. The actual costs of Perfect's long-term accommodations were minimal: \$30,000 for a multi-million dollar firm. Using its human resources staff to resolve problems promptly rather than after they gave rise to legal action proved far less time consuming and disruptive than the alternative of compelling it to assemble material for discovery and testimony at deposition and trial.<sup>11</sup>

The costs of engaging an ADA consultant and a medical consultant, temporarily reducing Mike's productivity, and keeping Mike's salary constant during the transitional period were substantially less than either the cost of a legal defense or of fully training a replacement for Mike. Most important, this strategy enabled Perfect to avoid the cost of losing a valued and qualified employee, and supported Mike during his treatment and recovery.

Perfect's ADA compliance strategy produced other long-term benefits. The ADA consultant was not needed for subsequent negotiations because Perfect's human resources staff was trained in using ADR under the ADA. Mike and his supervisor were able to act as mediators for others with disabilities in the company. As a result of its experience with Mike, Perfect began to educate its employees about the use of ADR under the ADA while taking proper measures to ensure Mike's continued privacy. Training supervisors and managers in ADR techniques not only supported compliance with the ADA, but improved general communication and managerial skills throughout Perfect. Perfect also began compiling an in-house data bank of potential accommodations and literature that could be useful for providing accommodations for other qualified employees with disabilities.

## CONCLUSION

This article describes a process by which employers may use ADR principles to resolve potential disputes involving reasonable accommodations under the employment provisions of the ADA. Perfect's strategy was tailored to a white-collar employee with a bipolar mental illness in a large corporation. The problem-solving process included gathering information about the employee's disability, the essential functions of the employee's position, and the needs of the company. The process involved informal and formal dialogues with the employee, the employee's supervisor, management, and external consultants. The process resulted in a flexible accommodation plan that enabled Perfect to conduct systematic evaluations and appropriate revisions.

---

<sup>10</sup> The Center for Public Resources reports that for large cases, ADR saves an average of \$800,000 per case. H. Mazdoorian, "Putting Together an ADR Plan," *Business Law Today* (Sept./Oct. 1993) at 41.

<sup>11</sup> See B. McMahon, "Lessons from Litigation: The Employment Experience of Persons with Disabilities during the First Year of ADA Title I," NARPPS (in press), which notes that 38% of complaints filed under the ADA in 1983 related to mental illness alleged unfair discharge or layoff, whereas only 13% alleged unreasonable accommodations.

The process described above reflects the view that the ADA is as much a measure of this nation's resolve to value individual rights as of the realization that millions of qualified persons with disabilities are capable of contributing to the success of American business. This article is meant to stimulate discussion about opportunities and barriers in the actual implementation of Title I of the ADA. The analysis is not exhaustive, and readers should note that the positive outcome in the case of Mike Johnson resulted from good-faith efforts by all parties. Creative problem solvers can propose many other ways for employers and qualified employees with disabilities to promote effective ADA implementation as sound business policy.

### **Table 1. The Accommodation Plan for Mike Johnson**

#### **I. PURPOSE**

Perfect Technology's employee Mike Johnson, his supervisor, and a consultant met to initiate a problem-solving dialogue regarding Mike's disability. This accommodation plan describes an approach that Mike and his supervisor have determined will meet their needs.

#### **II. PRINCIPLES**

A. Mike's privacy must be respected.

B. Mike's medical condition, bipolar disorder, is a mental disability that may at times interfere with the performance of his duties at Perfect.

C. Perfect is committed to offering reasonable accommodations to Mike.

D. Mike and his supervisor want Mike to return to his status as a fully productive employee and to continue to improve his knowledge base and skills.

E. Mike's supervisor needs to provide clients with excellent service in a timely fashion.

F. Perfect must deliver its products in a fiscally responsible manner.

#### **III. TASKS**

To return to the level of performance expected of a senior account executive, Mike must do the following.

(At this point the plan reproduced Mike's job description).

#### **IV. ACCOMMODATIONS**

##### **A. Short-Term Accommodations**

The following temporary accommodations will be accorded to Mike as support for an orderly resumption of the performance of all the responsibilities of a senior account executive and are not anticipated to be needed for more than six weeks.

1. A co-worker will be designated as a peer support person for Mike. Mike's peer support person will accompany him on every trip that requires an overnight stay outside Mike's base city.
2. On average, the number of sales calls Mike will make will equal one-half of those required by his normal appointment schedule.
3. Mike's rate of pay will remain at his average for this period in the previous calendar year, including bonus income.
4. Mike's emergency calls and new customer calls will be minimized.
5. Mike's supervisor will continue to learn the characteristics of bipolar disorder so that he has an understanding of Mike's disability, and will maintain an open-door policy for discussion.
6. Perfect will engage a neutral advisor to assist in the dialogue on evaluating and modifying the plan of accommodation, and will make the advisor available to Mike and his supervisor in Mike's base city.
7. Although Perfect's company policies would permit it to apply Mike's paid vacation to his period of hospitalization, Perfect has chosen not to do this. Instead, Mike may retain his pool of vacation days so that he can draw upon them to reduce stress.

#### **B. Long-Term Accommodations**

1. Mike's supervisor will permit the flexible scheduling of hours to accommodate Mike's need to attend doctor appointments, therapy sessions, or other treatment.
2. Mike will have access to a private work office space so that he can regulate his environment and minimize interruptions during periods of stress.
3. During Mike's annual performance review, Mike's supervisor will not use any information gathered during Mike's period of hospitalization or the period of short-term accommodation or any information concerning bipolar mental illness in considering whether Mike qualifies for a promotion or raise.

#### **V. ASSESSMENT**

- A. Mike and his supervisor will meet at least weekly, and more often if necessary, to discuss whether Mike is performing the tasks as expected.
- B. Mike and his supervisor agree that Mike must return to the level of productivity consistent with a senior account executive. That level of productivity should be reached in six weeks.
- C. At the end of six weeks, Mike and his supervisor will meet to discuss the removal of the short-term accommodations.

#### **VI. REAFFIRMATION**

This is not a contract. It is a voluntary statement by Mike and his supervisor meant to facilitate a positive work environment for Mike, his supervisor, and their colleagues to assure that Perfect's clients are served in a timely, cost-effective manner.