



The FMLA and ADA in Action

A Performative Issue Spotter

Scene 1

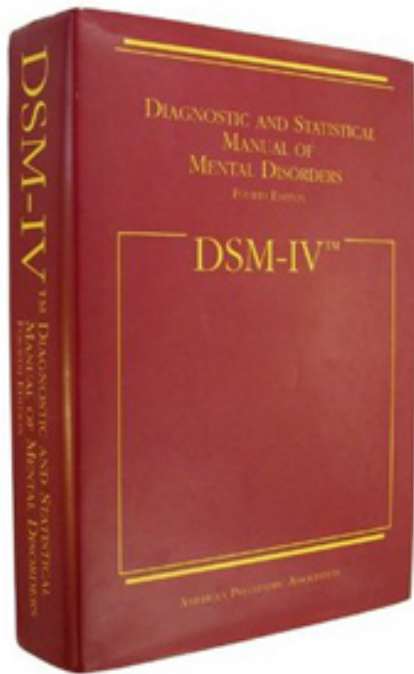
So Su Mi Yoga Studio

Kirkland, Washington



ADA “disability”

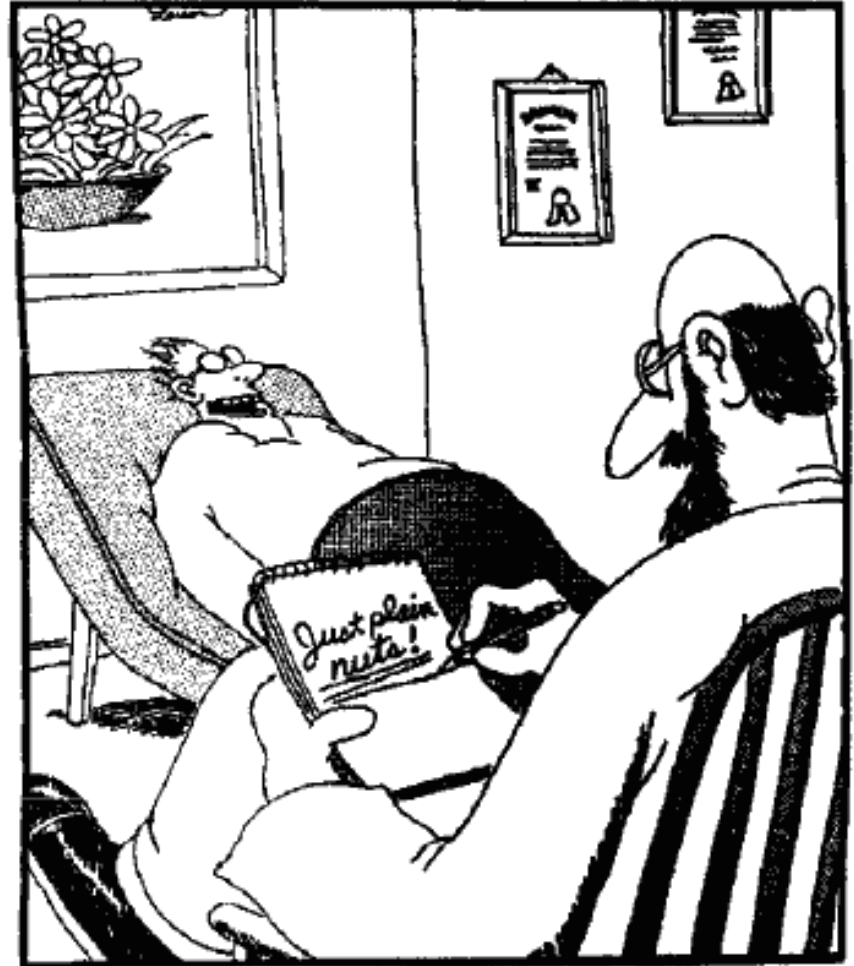
- “a physical *or mental* impairment that substantially limits one or more ... major life activities”



- Schizophrenia
- Bipolar disorder
- Borderline personality disorder
- Major depression
- OCD

FMLA “serious health condition”

- More than “three-day incapacity,” plus continuing treatment
- chronic conditions



Time off: ADA accommodation or FMLA leave?

[7] While a leave of absence might be a reasonable accommodation in some cases, Wood was requesting an indefinite leave of absence. Wood might return to work

Mark WOOD, Plaintiff–Appellee,

v.

Charlie GREEN, Clerk of Circuit
Court for Lee County, Florida,
Defendant–Appellant.

No. 02–12971.

United States Court of Appeals,
Eleventh Circuit.

March 13, 2003.

[7] While a leave of absence might be a reasonable accommodation in some cases, Wood was requesting an indefinite leave of absence. Wood might return to work within a month or two, or he could be stricken with another cluster headache soon after his return and require another indefinite leave of absence. Wood was not requesting an accommodation that allowed him to continue work in the present, but rather, in the future—at some indefinite time. The *Duckett* court parenthetically noted that more compelling facts might lead to a different result. *Id.* at 1226 n. 2.

FMLA leave exhaustion → discharge?

Interactive process

- “To determine the appropriate reasonable accommodation it may be necessary for the [employer] to initiate an informal, interactive process.”



Scene 2

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Essential functions

- Fundamental job duties that an employee must be able to perform *with or without* the help of a reasonable accommodation.
- Job-specific



What is a “reasonable” accommodation?

- Providing or modifying equipment or devices
- Job restructuring
- Part-time or modified work schedules
- Reassignment to a vacant position
- Adjusting or modifying examinations, training materials, or policies
- Providing readers and interpreters
- Making the workplace readily accessible to and usable by people with disabilities



What is a “reasonable” accommodation?



"I'm your new problem.
I mean manager."



Scene 3

So Su Mi Yoga Studio

Kirkland, Washington



Welcome to Your Profile

This is your place to collect photos, interests, and life events that tell your story on Facebook.

Start Tour

Now
2013
Born



Add a Cover

Emily Bushaw

Update Info

Activity Log



Timeline

About

Photos

Friends

More

About

Worked at So Su Mi Yoga

Lives in Seattle, Washington

Where did you go to high school?

Where did you grow up?

What is your relationship status?

Music

+ Add Music You Like

Movies

+ Add Movies You've Watched

TV Shows

+ Add TV Shows You've Watched

Books

Status Photo Place Life Event

What's on your mind?



Emily Bushaw

3 minutes ago

Untitled Album (13 photos)
YOGA in INDIA -- it was so HOT!!!



Dave Bouskill '09





Emily Bushaw

Photos

+ Create Album

YOGA in INDIA -- it was so HOT!!!





Emily Bushaw

8 minutes ago

I love doing yoga in the hot sun!

Tag Photo

Add Location

Edit

Like · Comment · Unfollow Post · Share · Edit



Write a comment...


Press Enter to post.



Emily Bushaw

9 minutes ago 

The hotter the better, look at me sweat!!

 Tag Photo

 Add Location

 Edit

Like · Comment · Unfollow Post · Share · Edit



Write a comment...

Press Enter to post.

Games You May Like



Angry Birds Friends

10,000,000 people play Angry Birds Friends.

 Play Now



Plants vs. Zombies Adventures

1,000,000 people play Plants vs. Zombies Adventures.

 Play Now




Emily Bushaw

10 minutes ago 

I love doing yoga in India!! — in India.

 Tag Photo

 Edit

Like · Comment · Unfollow Post · Share · Edit



Write a comment...

Press Enter to post.

Games You May Like



Texas HoldEm Poker

10,000,000 people play Texas HoldEm Poker.

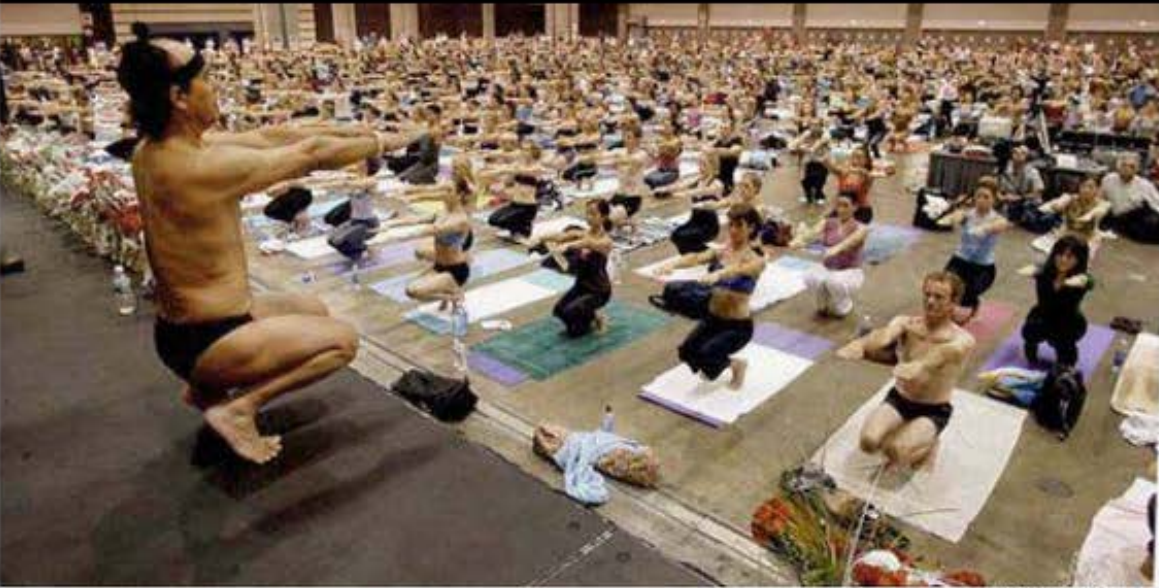
 Play Now



Criminal Case

10,000,000 people play Criminal Case.

 Play Now




AP / Reed Saxon



Emily Bushaw

11 minutes ago 

Add a description

 Tag Photo

 Add Location

 Edit

Like · Comment · Unfollow Post · Share · Edit



Write a comment...

Press Enter to post.

Games You May Like



Angry Birds Friends

10,000,000 people play Angry Birds Friends.

 Play Now



Papa Pear Saga

10,000,000 people play Papa Pear Saga.

 Play Now



Emily Bushaw

12 minutes ago

Add a description

Tag Photo

Add Location

Edit

Like · Comment · Unfollow Post · Share · Edit



Write a comment...

Press Enter to post.

Games You May Like



**Plants vs. Zombies
Adventures**

1,000,000 people play Plants vs. Zombies
Adventures.

Play Now



Texas HoldEm Poker

10,000,000 people play Texas HoldEm Poker.

Play Now

Social media at work

- New WA law limits employers' access to social media accounts

© Randy Glasbergen
glasbergen.com



**"I need your Facebook password before I can hire you.
If you're not on Facebook, I need you to join and post a
bunch of personal stuff you don't want me to know about."**

When employees misuse FMLA leave: The “Honest Belief” Doctrine



FAKING OUT PARENTS

- 1. Fake a Stomach Cramp**
- 2. Moan and Wail**
- 3. Lick Palms**



Addiction as disability

- Any employee who is “currently engaging” in illegal drug use is not a “qualified individual with a disability.”
- But alcoholism may be disability.



CELEBRITY
R&EHAB
WITH DR. DREW



Is marijuana a reasonable accommodation?

348 Or. 159

EMERALD STEEL FABRICATORS,
INC., Petitioner on Review,

v.

BUREAU OF LABOR AND
INDUSTRIES, Respondent
on Review.

(BOLI 3004; CA A130422; SC S056265).

Supreme Court of Oregon.
En Banc.

Argued and Submitted March 6, 2009.

Decided April 15, 2010.

Because employee did not take marijuana under supervision of a licensed health care professional and because the authorization to use marijuana found in ORS 475.306(1) is unenforceable, it follows that employee was currently engaged in the illegal use of drugs and, as the commissioner found, employer discharged employee for that reason. Under



171 Wash.2d 736

Jane ROE, Petitioner,

v.

TELETECH CUSTOMER CARE
MANAGEMENT (COLORADO)
LLC, Respondent.

No. 83768-6.

Supreme Court of Washington,
En Banc.

Argued Jan. 18, 2011.

Decided June 9, 2011.

The language of MUMA is unambiguous—it does not regulate the conduct of a private employer or protect an employee from being discharged because of authorized medical marijuana use.

Performance Issues

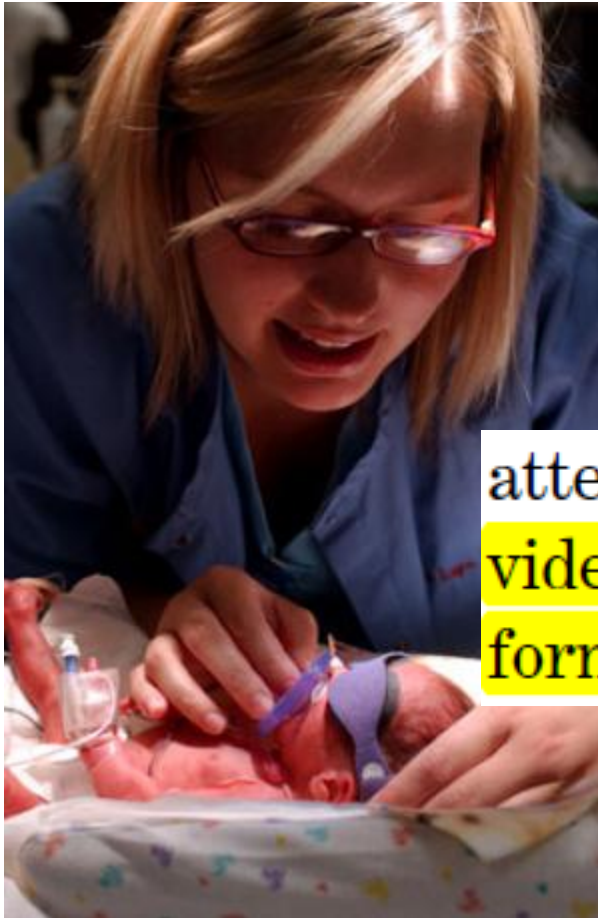
SAMPER v. PROVIDENCE ST. VINCENT MEDICAL CENTER

Cite as 675 F.3d 1233 (9th Cir. 2012)

McKEOWN, Circuit Judge:

Samper's performance is predicated on her attendance; reliable, dependable performance requires reliable and dependable attendance. An employer need not provide accommodations that compromise performance quality—to require a hospital to do so could, quite literally, be fatal.

attendance. An employer need not provide accommodations that compromise performance quality—to require a hospital to



Dress codes



The End

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Kirkland, Washington

