

# THE NATIONAL LAW REVIEW

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## Difficult Situation Know-How: What To Do If an Employee Seems Suicidal

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As people in the world, we face difficult situations all the time. If someone seems sad or depressed, we may want to help but not know how. When it's your employee who is going through tough times, you may have legal concerns to worry about too. It's good to be as prepared as possible beforehand. For example, let's imagine that one of your employees seems depressed and starts making comments around the workplace about hurting him or herself.

A condition causing an employee to become suicidal may be covered under the **Americans with Disabilities Act ("ADA")**. In that case, it would be an unlawful discriminatory practice to take adverse employment actions based on the employee's condition, and the employee may be entitled to a reasonable accommodation. If an employee makes a statement or does something that causes you to think that he or she may be suicidal, it is best to initially address the situation under the assumption that the employee has a condition covered under the ADA.

The first thing to do is to have a private conversation with the employee. Do not ask if the employee has a medical condition. Rather, ask the employee if there is anything you or the company can do to help. You can also ask if anything at work is causing or contributing to the employee's problem and ask if the employee has any ideas for what could change at work to help. If the employee has reasonable requests for accommodation, then accommodate the employee. Later, follow up with the employee to ensure that the accommodation helped the problem. If not, it may be time to seek advice from your attorney to determine whether the employee is suffering from a condition covered by the ADA.

Be sure to document this entire process: keep written documentation of (1) the employee's complaint(s), (2) that you asked how you could help, (3) that you did not ask whether the employee has any medical conditions, (4) that the employee suggested a certain accommodation, (5) that you provided the accommodation, and (6) that you followed up with the employee to see if the accommodation worked. Keep this documentation confidential.

Although you generally do not want to ask about whether the employee has a medical condition (such as depression), you can listen if the employee brings personal problems up and wishes to talk about them. It's better not to offer advice, but you can offer hope that the employee will find a solution to his or her problems. You can also let the employee know that counseling is available, for instance, through an Employee Assistance Program, a crisis intervention or suicide prevention resource in your community, or a suicide-prevention hotline. Be careful not to pressure the employee or to imply that counseling is required or in any way a penalty. Again, keep your conversation confidential.

As a final note, the only time it may be alright to ask your employee whether they have a medical condition is when asking is job-related and consistent with business necessity. For example, this may be the case when the employee's ability to perform essential job functions is impaired because of the condition or when the employee poses a direct threat. However, it is a good idea to consult your attorney before making such an inquiry as it can be fraught with legal perils.



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