CUSTOMER SERVICE RULES: WHEN A COMPANY CANNOT HIRE OR RETAIN A MENTALLY ILL EMPLOYEE WITH SEVERELY LIMITED INTERPERSONAL SKILLS

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TABLE OF CONTENTS

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I. INTRODUCTION

At some point, every hiring manager at every company will have the following experience interviewing a job applicant: the applicant is so unpleasant or confrontational that the hiring manager can only look at the clock and pray for time to pass quickly. Helen, the hiring manager at X Corporation experiences this very interview with a job applicant named Adam. Based on Adam's hostile demeanor, Helen can tell that Adam would not be able to get along with his co-workers, take direction from a superior, or satisfy customer requests. In fact, at one point during the interview, Adam admits to having "some emotional problems that sometimes cause me to get into fights when I'm stressed." There is no chance that X Corporation will hire this applicant, and Helen might even wonder what company would ever hire such an antisocial and hostile person. After struggling through the interview, Helen promptly mails Adam a rejection letter. Helen could tell there was something wrong with Adam and even mentions to a fellow human resources employee that the applicant seemed "crazy." However, Helen did not know that Adam's doctor previously diagnosed him with severe clinical depression and that Adam has extreme difficulty interacting with people in all facets of his life.

By this time, Adam has grown frustrated by numerous job rejections as he attempts to find a job so that he can continue to pay his rent and avoid becoming homeless. Adam seeks advice from a legal aid office that suggests employers, including X Corporation, are discriminating against him because of his mental illness. The legal aid office directs Adam to the Equal Employment Opportunity Commission (EEOC) to pursue a discrimination claim under the Americans with Disabilities Act (ADA). The EEOC, believing Adam has a case, decides to pursue a lawsuit on his behalf and serves X Corporation with a complaint alleging employment discrimination. Does the law require X Corporation to hire an applicant like Adam?

This Article addresses whether a mentally ill individual with severely

inhibited interpersonal skills qualifies for protection as an "individual with a disability" under the ADA. Part II provides a general background of the ADA as it relates to employment discrimination. Part III details the circuit split over whether "interacting with others" is a major life activity for ADA purposes and describes, among those circuits that recognize "interacting with others," the varying tests for whether ADA plaintiffs' impairment substantially limits their ability to interact with others. Part IV presents a structure for employers to defend against ADA discrimination claims for failure to hire or retain a mentally ill plaintiff who is unable to interact with others. This Article suggests that an employer should argue that "interacting with others" is too vague and subjective for courts to consider it a major life activity. Even if a court holds that "interacting with others" is a major life activity, the employer should argue that a plaintiff who is so severely limited in his ability to interact with others that he meets the "substantially limited" standard could not be a "qualified individual" and thus, no reasonable accommodations would exist for such an employee. An employer might also invoke several affirmative defenses such as job qualification standards or that the plaintiff presented a direct workplace threat.

II. ADA PROTECTION IN THE EMPLOYMENT CONTEXT

In 1990, Congress enacted the ADA to provide comprehensive federal protection for the estimated forty-three million Americans with physical or mental disabilities.[1] Congress found that disabled Americans historically faced discrimination and required affirmative efforts to facilitate equal opportunities and full participation in American society, including in the workplace.[2] The legislation approached protection of disabled Americans in a groundbreaking manner, departing from previous federal disability laws that focused on disabled individuals' inabilities and instead focusing on the barriers society presents to the disabled.[3] The ADA specifically seeks to eliminate the physical and discriminatory barriers to employment that disabled individuals face.[4]

Title I of the ADA prohibits employers[5] from discriminating[6] against

1. Americans with Disabilities Act of 1990, 42 U.S.C. § 12101(a)(1) (2000).

2. *Id.* § 12101.

3. 1 JONATHAN R. MOOK, AMERICANS WITH DISABILITIES ACT: EMPLOYEE RIGHTS & EMPLOYER OBLIGATIONS § 1.01 (2006).

4. *See* 42 U.S.C. § 12101 ("Congressional findings and purposes").

5. For an employer to be subjected to ADA Title I rules, the employer must have "15 or more employees for each working day in each of 20 or more calendar

qualified individuals because of their disabilities.[7] The ADA's definition of "disability" protects an individual who: (1) has an actual disability that substantially limits that individual in a major life activity; (2) has a record of having a disability (even if the individual is not currently disabled); or (3) is regarded as having a disability (even if the individual is not currently, or never was, disabled).[8] This Article addresses only treatment of the basic "actual disability" claim– the first part of the disability definition. In order to establish a prima facie case for "actual disability" discrimination in the employment context, a plaintiff must show: (1) the plaintiff has a disability within the intended protection of the ADA; (2) the plaintiff is a "qualified individual"; and (3) the employer refused to make reasonable accommodations to the plaintiff or otherwise discriminated against the plaintiff.[9]

A. *Plaintiff Must Show Actual Disability*

In order to succeed in an ADA employment discrimination claim, plaintiffs must first show that they are disabled within the meaning of the ADA.[10] In the section preceding the ADA's main titles regulating employment (Title I), public services (Title II), and public accommodations (Title III), the ADA defines a "disability" as "a physical or mental impairment that substantially limits one or more of the major life activities of such individual."[11] The EEOC and the courts have attempted on numerous occasions to define and interpret "disability" beyond the language the ADA provides. Congress delegated ADA Title I interpretive

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weeks in the current or preceding calendar year," excluding the United States government and any "bona fide private membership club" that is tax-exempt under 26 U.S.C. § 501(c).

42 U.S.C. § 12111(5)(A)–(B).

6. Specifically, Title I prohibits any employer from discriminating "in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." *Id.* § 12112(a).

7. *Id.*

8. *Id.* § 12102(2).

9. *E.g.*, Simpson v. Des Moines Water Works, 425 F.3d 538, 542 (8th Cir. 2005) (quoting Henderson v. Ford Motor Co., 403 F.3d 1026, 1034 (8th Cir. 2005)); Reed v. Heil Co., 206 F.3d 1055, 1061 (11th Cir. 2000); White v. York Int'l Corp., 45 F.3d 357, 360–61 (10th Cir. 1995).

10. Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184, 194 (2002).

11. 42 U.S.C. § 12102(2)(A). The ADA also lists in the definition of disability "a record of such an impairment" or "being regarded as having such an impairment." *Id.* § 12102(2)(B)–(C).

and enforcement authority to the EEOC.[12] However, the Supreme Court has twice questioned whether EEOC regulations defining disability are entitled to judicial deference because the ADA does not grant the EEOC the authority to interpret the preliminary section of the ADA.[13] The Supreme Court and the ADA require strict interpretation and demanding standards for determining whether a plaintiff is disabled and therefore protected by the ADA.[14]

In *Bragdon v. Abbott*, the Supreme Court outlined a three-step process for proving an actual disability.[15] When reviewing an actual disability claim, a court should determine: (1) whether the plaintiff has identified an actual impairment; (2) what life activity the plaintiff claims their disability limits and whether that life activity is "major" under the ADA; and (3) whether the plaintiff's impairment substantially limits the identified major life activity.[16]

B. *Impairment*

Under the Supreme Court's structure for showing an actual disability, the plaintiff must first show a physical or mental impairment.[17] The EEOC promulgated a regulation defining "physical or mental impairment" as: "(1) Any physiological disorder, or condition, cosmetic disfigurement, or

12. *Id.* §§ 12116–12117.

13. *Toyota*, 534 U.S. at 194; Sutton v. United Air Lines, Inc., 527 U.S. 471, 478–80 (1999). The ADA only grants the EEOC authority to interpret and enforce Title I. 42 U.S.C. §§ 12116–12117. Absent an express delegation of authority to define "disability," the EEOC's definition is, at most, entitled to a limited amount of judicial deference and certainly is not entitled to *Chevron's* high level of judicial deference. *See* Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 842–44 (1984) (ruling that, when there is an express delegation of authority to an agency to define a statutory provision, the agency interpretation will be given "controlling weight" unless found to be arbitrary or capricious); *see also* Bragdon v. Abbott, 524 U.S. 624, 642 (1998) (observing "the well-reasoned views of the agencies implementing a statute 'constitute a body of experience and informal judgment to which courts and litigants may properly resort for guidance'" (quoting Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944))).

14. *Toyota*, 534 U.S. at 197; *Sutton*, 527 U.S. at 487. In both cases, the Supreme Court reasoned that Congress evidenced its intent to limit the ADA's protection to a certain smaller subset of disabled individuals by specifically quantifying the American disabled population at forty-three million when there are substantially more Americans facing some limitation based on a physical or mental medical condition. *Toyota*, 534 U.S. at 197; *Sutton*, 527 U.S. at 487.

15. Bragdon v. Abbott, 524 U.S. 624, 631 (1998).

16. *Id.*

17. *Toyota*, 534 U.S. at 194.

anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproduction, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or (2) Any mental or psychological disorder . . . ."[18] The courts and the EEOC have refrained from listing per se impairments or disabilities because a medical condition can have varying effects on any individual.[19] For example, ADA plaintiffs have successfully claimed the following physical and mental impairments: HIV infection,[20] heart disease,[21] anxiety,[22] depression,[23] and post-traumatic stress disorder (PTSD).[24] However, the ADA specifically excludes the following from qualification as impairments: "(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders; (2) compulsive gambling, kleptomania, or pyromania; or (3) psychoactive substance use disorders resulting from current illegal use of drugs."[25] Plaintiffs have the burden of proving that they are suffering from a physical or mental impairment,[26] and may do so by offering medical evidence or testimony regarding their disease.

C. *Major Life Activity*

Once plaintiffs have proven they are impaired, they must show that the impairment affects their ability to engage in a major life activity.[27] The question of whether an activity is a major life activity for the purpose of the ADA is a question of law and does not turn on the importance of the

18. 29 C.F.R. § 1630.2(h) (2006).

19. *Sutton*, 527 U.S. at 483 (explaining that "whether a person has a disability under the ADA is an individualized inquiry"); *Bragdon*, 524 U.S. at 641–42 (refusing to address whether HIV is a per se disability under the ADA); *see also* 29 C.F.R. § 1630.2(j)(2) (providing factors for "determining whether an individual is substantially limited in a major life activity").

20. *Bragdon*, 524 U.S. at 641.

21. Weber v. Strippit, Inc., 186 F.3d 907, 913–14 (8th Cir. 1999).

22. Weiler v. Household Fin. Corp., No. 93-C6454, 1994 WL 262175, at *3 (N.D. Ill. June 10, 1994).

23. Soileau v. Guilford of Me., Inc., 928 F. Supp. 37, 47 (D. Me. 1996), *aff'd*, 105 F.3d 12, 15 (1st Cir. 1997).

24. Marschand v. Norfolk & W. Ry. Co., 876 F. Supp. 1528, 1538 (N.D. Ind. 1995).

25. 42 U.S.C. § 12211(b) (2000).

26. *E.g.*, Simpson v. Des Moines Water Works, 425 F.3d 538, 542 (8th Cir. 2005); Reed v. Heil Co., 206 F.3d 1055, 1061 (11th Cir. 2000).

27. Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184, 195 (2002).

activity to an individual plaintiff.[28] The EEOC promulgated a regulation stating that major life activities are "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working."[29] The EEOC also issued a compliance manual– subject to limited judicial deference[30]– that states, in addition to the promulgated list of major life activities, "sitting, standing, lifting, [and] [m]ental and emotional processes such as thinking, concentrating, and interacting with others."[31]

According to the Supreme Court, major life activities are not limited to public activities,[32] but are those activities "of central importance to daily life."[33] In *Bragdon*, the Court held that reproduction is a major life activity because of its "'comparative importance,'"[34] while the dissenting Justices argued that the better measure for defining a major life activity is whether that activity is "repetitively performed and essential in the day-to-day

28. Amir v. St. Louis Univ., 184 F.3d 1017, 1027 (8th Cir. 1999); Pack v. Kmart Corp., 166 F.3d 1300, 1305 (10th Cir. 1999); Colwell v. Suffolk County Police Dep't, 158 F.3d 635, 642 (2d Cir. 1998).

29. 29 C.F.R. § 1630.2(i) (2006). This list of major life activities mirrors the list provided in the Rehabilitation Act's implementing regulations. 45 C.F.R. § 84.3(j)(2)(ii) (2006). The Supreme Court interprets Congress's language in the ADA to require that ADA-implementing regulations be consistent with Rehabilitation Act regulations. Bragdon v. Abbott, 524 U.S. 624, 638 (1998). However, the Supreme Court has specifically questioned whether "working" is a major life activity. *Toyota*, 534 U.S. at 200; Sutton v. United Air Lines, Inc., 527 U.S. 471, 492 (1999). See *infra* Part III. for the conceptual difficulties presented by some EEOC-defined "major life activities."

30. *See, e.g.*, Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 566 (1980) (recognizing "considerable respect" for Federal Reserve Board interpretations of the Truth In Lending Act); Skidmore v. Swift & Co., 323 U.S. 134, 139–40 (1944) (citing a lack of statutory provisions requiring judicial deference of administrative conclusions). Further, some courts have explicitly rejected EEOC Interpretive Guidance as not providing controlling authority regarding ADA disability determinations. *E.g.*, Lamb v. Qualex, Inc., 33 F. App'x 49, 58 (4th Cir. 2002); Doyal v. Okla. Heart Inc., 213 F.3d 492, 496 (10th Cir. 2000); Gilday v. Mecosta County, 124 F.3d 760, 767 (6th Cir. 1997); Soileau v. Guilford of Me., Inc., 105 F.3d 12, 15 n.2 (1st Cir. 1997); Breiland v. Advance Circuits, Inc., 976 F. Supp. 858, 863 (D. Minn. 1997); *see also* Shalala v. Guernsey Mem'l Hosp., 514 U.S. 87, 99 (1995) ("Interpretive rules . . . do not have the force and effect of law and are not accorded that weight in the adjudicatory process.").

31. EEOC COMPLIANCE MANUAL § 902.3(b) (2002) (citation omitted).

32. *Bragdon*, 524 U.S. at 638–39.

33. *Toyota*, 534 U.S. at 197.

34. *Bragdon*, 524 U.S. at 638 (quoting Abbott v. Bragdon, 107 F.3d 934, 939–40 (1st Cir. 1997)).

existence of a normally functioning individual."[35]

D. *Substantial Limitation*

Finally, after the plaintiff establishes that his impairment affects a major life activity, the plaintiff must further show his impairment substantially limits that particular major life activity.[36] Under EEOC regulations, an individual faces a substantial limitation when that individual is:

> (i) Unable to perform a major life activity that the average person in the general population can perform; or
>
> (ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.[37]

EEOC regulations further instruct courts to consider the impairment's nature and severity, duration, and expected length of impact when determining the substantiality of a plaintiff's limitation.[38]

The Supreme Court has noted that substantial limitations need not rise to the level of an insurmountable "utter inabilit[y]."[39] Courts should measure limitations based on a plaintiff's ability to engage in a major life activity both outside and within the workplace,[40] taking into account the plaintiff's state after corrective or mitigating measures.[41] In *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, the Court held that the lower

35. *Id.* at 659–60 (Rehnquist, C.J., dissenting). In his dissent, Chief Justice Rehnquist urged that reproducing is not a major life activity because it is a process, not an activity, comprised of "numerous discrete activities." *Id.* at 658 n.2.

36. *Toyota*, 534 U.S. at 195.

37. 29 C.F.R. § 1630.2(j)(1)(i)–(ii) (2006).

38. *Id.* § 1630.2(j)(2)(i)–(iii).

39. *Bragdon*, 524 U.S. at 641.

40. *Toyota*, 534 U.S. at 200–01 ("There is . . . no support in the Act, our previous opinions, or the regulations for the . . . idea that the question of whether an impairment constitutes a disability is to be answered only by analyzing the effect of the impairment in the workplace.").

41. Sutton v. United Air Lines, Inc., 527 U.S. 471, 482–83 (1999) (holding that a court should base its determination of a plaintiff's substantial limitation on the plaintiff's actual mitigated state, not the impairment the disability might have caused had the plaintiff done nothing to treat or correct his condition).

court erred in finding, as a matter of law, that plaintiff's carpal tunnel syndrome substantially limited her ability to perform manual tasks "of central importance to most people's daily lives."[42] The plaintiff was not substantially limited because, while she was limited in her ability to complete some manual tasks at her job, she was able to perform other manual tasks at work and was able to perform numerous manual tasks outside of the workplace, including bathing, gardening, and doing housework.[43]

E. *Plaintiff Must Meet the Qualified Individual Standard*

While the ADA seeks to protect disabled individuals from employment discrimination, Congress was careful to retain "an employer's ability to choose and maintain qualified workers."[44] Even if plaintiffs show they are disabled within the meaning of the ADA, they still face the burden of showing that they are a "qualified individual."[45] Title I of the ADA defines a qualified individual as someone who "can perform the essential functions" of the job in question, "with or without reasonable accommodation[s]."[46] Essential job functions are fundamental duties that are actually required of employees in that position.[47] Courts grant deference to an "employer's judgment as to what functions of a job are essential," especially when the employer provides evidence such as a written job description used to advertise a vacancy.[48] Some traditionally accepted essential job functions include regular attendance,[49] rotating among various tasks,[50] and *interacting and getting along with others*.[51]

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42. Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184, 198, 200 (2002).

43. *Id.* at 201–02.

44. S. REP. NO. 101-116, at 26 (1989).

45. 42 U.S.C. § 12112(a) (2000); *see also* Albertson's, Inc. v. Kirkingburg, 527 U.S. 555, 578 (1999) (Thomas, J., concurring); Calef v. Gillette Co., 322 F.3d 75, 86 (1st Cir. 2003).

46. 42 U.S.C. § 12111(8); *see also* Mason v. Avaya Commc'ns, Inc., 357 F.3d 1114, 1118 (10th Cir. 2004).

47. 29 C.F.R. § 1630.2(n)(1) (2006).

48. 42 U.S.C. § 12111(8); *see also, e.g.*, D'Angelo v. Conagra Foods, 422 F.3d 1220, 1233–34 (11th Cir. 2005); Kammueller v. Loomis, Fargo & Co., 383 F.3d 779, 786 (8th Cir. 2004); Tate v. Farmland Indus., Inc., 268 F.3d 989, 993 (10th Cir. 2001); Kvorjak v. Maine, 259 F.3d 48, 54–55 (1st Cir. 2001); Skerski v. Time Warner Cable Co., 257 F.3d 273, 279–80 (3d Cir. 2001).

49. *E.g.*, Carr v. Reno, 23 F.3d 525, 529 (D.C. Cir. 1994) (holding that plaintiff could not perform the essential function of regular attendance).

50. *E.g.*, Watson v. Lithonia Lighting Co., 304 F.3d 749, 750–51 (7th Cir. 2002); Mathews v. Denver Post, 263 F.3d 1164, 1169 (10th Cir. 2001).

F. *Plaintiff Must Show that the Employer Discriminated or Refused Reasonable Accommodations*

Proof of employment discrimination under the ADA follows the same *McDonnell Douglas* burden-shifting structure as other disparate treatment cases alleging employment discrimination based on age, race, sex, or national origin in the employment context.[52] However, the ADA requires more of employers than other federal laws prohibiting employment discrimination.[53] As with most federal anti-discrimination laws, the ADA prohibits employers from making adverse employment decisions based on a person's disability.[54] Additionally, an employer must affirmatively offer otherwise qualified disabled individuals reasonable accommodations to enable their employment and may not deny individuals employment opportunities based on their potential need for

51. *E.g.*, Calef v. Gillette Co., 322 F.3d 75, 86 (1st Cir. 2003) ("It is an essential function of a job that a production manager be able to handle stressful situations . . . without making others in the workplace feel threatened for their own safety."); Williams v. Motorola, Inc., 303 F.3d 1284, 1290 (11th Cir. 2002) ("An employee's ability to handle reasonably necessary stress and work reasonably well with others are essential functions of any position."); Grevas v. Vill. of Oak Park, 235 F. Supp. 2d 868, 875 (N.D. Ill. 2002) (ruling that plaintiff "could not get along with her co-workers" and therefore was not qualified to perform the essential job functions); Riding v. Kaufmann's Dep't Store, 220 F. Supp. 2d 442, 461 (W.D. Pa. 2002) (granting summary judgment for employee, in part, because plaintiff failed "to manage in a positive, non-condescending manner"); Weigert v. Georgetown Univ., 120 F. Supp. 2d 1, 14 (D.D.C. 2000) ("[T]echnical skills and experience are not the only essential requirements of a job [because] stability and the ability to interact with co-workers and supervisors can constitute an essential function."); Misek-Falkoff v. Int'l Bus. Machs. Corp., 854 F. Supp. 215, 227 (S.D.N.Y. 1994) ("It is certainly a 'job-related requirement' that an employee, handicapped or not, be able to get along with co-workers and supervisors.").

52. Raytheon Co. v. Hernandez, 540 U.S. 44, 49 n.3 (2003). *McDonnell Douglas* set forth the following structure for proving disparate-treatment employment discrimination claims: (1) plaintiff must establish a prima facie case of discrimination, creating a presumption of discrimination; (2) employer must articulate a "legitimate, nondiscriminatory reason" for its action, thus eliminating the presumption of discrimination; (3) plaintiff can then prove disparate treatment by demonstrating that the employer's proffered nondiscriminatory reason is pretext for its discriminatory motive. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802–04 (1973). Although evidentiary burdens shift throughout the case, the burden of proving employment discrimination remains on the plaintiff at all times. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 143 (2000) (quoting Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981)).

53. *See, e.g.*, Age Discrimination in Employment Act, 29 U.S.C. § 623(a) (2000); Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(e)(1) (2000).

54. 42 U.S.C. § 12112(a) (2000).

accommodations.[55] The ADA lists as examples of reasonable accommodations: facilities modification, modification of job tasks, work schedules, training materials, or examinations.[56] Disabled individuals are entitled only to reasonable accommodations when they would be able to perform the essential functions of the job with those accommodations.[57] In a suit charging discrimination, the burden is on the plaintiff to show that an accommodation was available and reasonable.[58]

G. *Affirmative Defenses: Undue Burden, Business Necessity, and Direct Threat*

The ADA provides affirmative defenses to employers defending an individual's prima facie employment discrimination case. The most common defenses are: (1) an accommodation would impose an undue burden on the employer;[59] (2) an employment qualification is a job-related business necessity;[60] and (3) the individual in question would pose a direct threat to himself or others at the business.[61]

Even when a disabled individual is qualified and requests accommodation, the ADA relieves employers of the accommodation requirement when the employer shows that the proffered accommodation would impose an undue hardship on that business.[62] The ADA defines undue hardship as "requiring significant difficulty or expense," and sets forth factors for courts to consider, such as the cost of the accommodation, financial resources of the employer and of the facility, the impact on the employer's operations, and the impact on other employees.[63] An undue burden may manifest in financial burden, substantial operational disruption, or a fundamental alteration of the nature of the business.[64]

Congress further established that the ADA could not require a business to hire an otherwise qualified disabled individual in every

55. *Id.* § 12112(b)(5).
56. *Id.* § 12111(9).
57. *Id.* § 12112(b)(5).
58. Turner v. Hershey Chocolate USA, 440 F.3d 604, 614 (3d Cir. 2006); Monette v. Elec. Data Sys. Corp., 90 F.3d 1173, 1183 (6th Cir. 1996).
59. 42 U.S.C. § 12112(b)(5)(A).
60. *Id.* § 12113(a).
61. *Id.* § 12113 (a)–(b).
62. *Id.* § 12112(b)(5); *Turner*, 440 F.3d at 614; *Monette*, 90 F.3d at 1183.
63. 42 U.S.C. § 12111(10).
64. García-Ayala v. Lederle Parenterals, Inc., 212 F.3d 638, 650 (1st Cir. 2000).

circumstance by specifically providing affirmative defenses in the Act.[65] The ADA provides that an employer may defend a discrimination charge by showing "qualification standards, tests, or selection criteria" that either denied or would tend to deny a disabled individual a job or employment benefit because of the disability are "job-related and consistent with business necessity."[66] Qualifications based on business necessity may include meeting federal safety standards to drive a truck,[67] walking without crutches to carry mail,[68] and passing a vision test to be hired as a warehouse worker.[69] Any standards or criteria offered as a defense must be necessary for the essential functions of the position.[70]

The ADA specifically allows an employer to disqualify a disabled individual from an employment opportunity if that individual would "pose a direct threat to the health or safety of other individuals in the workplace"[71] and if the employer could not eliminate the threat by reasonably accommodating the individual.[72] Defendants frequently have invoked the direct threat defense when the plaintiff's disability is a communicable disease[73] or when the workplace is dangerous and requires heightened skills to prevent workplace injuries.[74] While the ADA language specifically concerns individuals posing a threat to others, the Supreme Court upheld EEOC regulations expanding the direct threat defense to cases in which the disabled individual posed a threat to himself.[75] An employer should take an individualized approach in determining whether a disabled individual poses a direct threat in the workplace and must be

65. 42 U.S.C. § 12113.

66. *Id.* § 12113(a).

67. Albertson's, Inc. v. Kirkingburg, 527 U.S. 555, 570, 577–78 (1999); Tate v. Farmland Indus., Inc., 268 F.3d 989, 994–95 (10th Cir. 2001).

68. Crocker v. Runyon, 207 F.3d 314, 319 (6th Cir. 2000).

69. Dyke v. O'Neal Steel, Inc., 327 F.3d 628, 634 (7th Cir. 2003).

70. *See, e.g.*, Rios v. Ind. Bayer Corp., 965 F. Supp. 919, 922 (S.D. Tex. 1997).

71. 42 U.S.C. § 12113(b).

72. *Id.* § 12111(3).

73. *E.g.*, Bragdon v. Abbott, 524 U.S. 624, 650–52 (1998); *see also* Sch. Bd. of Nassau County v. Arline, 480 U.S. 273, 287 n.16 (1987) (stating that under the Rehabilitation Act, "[a] person who poses a significant risk of communicating an infectious disease to others in the workplace will not be otherwise qualified for his or her job if reasonable accommodation will not eliminate that risk").

74. *E.g.*, Darnell v. Thermafiber, Inc., 417 F.3d 657, 661 (7th Cir. 2005); Moses v. Am. Nonwovens, Inc., 97 F.3d 446, 447–48 (11th Cir. 1996).

75. Chevron U.S.A. Inc. v. Echazabal, 536 U.S. 73 (2002) (ruling that unavoidable toxins in the workplace could seriously exacerbate plaintiff's dangerous liver condition).

prepared to identify the specific risk posed by that specific individual.[76]

According to the legislative history of the direct threat defense, when dealing with the mentally ill, employers may not rely on stereotypes to support a direct threat defense; instead, "there must be objective evidence from the person's behavior that the person has a recent history of committing overt acts or making threats which caused harm or which directly threatened harm."[77]

III. CIRCUIT SPLIT IN TREATMENT OF "INTERACTING WITH OTHERS"

The most controversial issue in ADA discrimination lawsuits involving mentally ill individuals who are limited in their ability to interact with others is the question of whether interacting with others is a major life activity. If interacting with others is not a major life activity, an individual could not qualify as disabled if that was their only claim of limitation, and therefore the ADA would not protect that individual from adverse employment actions. Courts decide the question of whether any activity is a major life activity as a matter of law.[78]

When an employee is unable to interact with others because of his impairment, the circuits have split on the question of whether the ADA should protect that employee and, more specifically, the question of whether interacting with others is a major life activity for the purpose of ADA protection. The First Circuit has suggested that interacting with others is not a major life activity.[79] The Second and Ninth Circuits, on the other hand, hold the opposite.[80] Between those opposing positions, numerous courts of appeals have declined to decide whether interacting with others is a major life activity, while frequently noting concerns about the flexibility of such a concept.[81]

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76. 29 C.F.R. § 1630.2(r) (2006); *see also* Albertson's, Inc. v. Kirkingburg, 527 U.S. 555, 569 (1999).

77. H.R. REP. NO. 101-485, at 45–46 (1990).

78. Amir v. St. Louis Univ., 184 F.3d 1017, 1027 (8th Cir. 1999); Pack v. Kmart Corp., 166 F.3d 1300, 1305 (10th Cir. 1999); Colwell v. Suffolk County Police Dep't, 158 F.3d 635, 642 (2d Cir. 1998).

79. Calef v. Gillette Co., 322 F.3d 75 (1st Cir. 2003); Soileau v. Guilford of Me., Inc., 105 F.3d 12, 15 (1st Cir. 1997) (stating the "'ability to get along with others' is remarkably elastic, [and] perhaps . . . unworkable as a definition").

80. Jacques v. DiMarzio, Inc., 386 F.3d 192, 202–03 (2d Cir. 2004); McAlindin v. County of San Diego, 192 F.3d 1226, 1234–35 (9th Cir. 1999).

81. *See infra* Part III.C.

A. *Courts Holding that "Interacting with Others" Is Not a Major Life Activity*

In the first appellate case to decide that interacting with others is not a major life activity, the First Circuit, in *Soileau v. Guilford of Maine, Inc.*, affirmed a summary judgment holding that a plaintiff suffering episodic dysthymia, which caused him to suffer an inability to get along with others, was not substantially limited in a major life activity.[82] Noting that the formally promulgated EEOC regulations defining "disability" do not include interacting with others as a major life activity, the court distinguished such a subjective concept as "the ability to get along with others" from the more objective and measurable EEOC examples of breathing and walking.[83] The court stated that a better approach in a situation such as Soileau's is to look at "a more narrowly defined concept going to essential attributes of human communication."[84]

In *Calef v. Gillette Co.*, the First Circuit affirmed a summary judgment holding that an ADHD-diagnosed plaintiff who had episodic, unpredictable, and uncontrollable anger because of ADHD-related stress was not substantially limited in a major life activity.[85] First, the court found that Calef's ADHD did not cause enough of a limitation on the major life activities of learning and speaking.[86] Then, citing *Soileau*, the court held that Calef's inability to deal with his co-workers because of his stress was not a limitation on a major life activity.[87] The court further stated that "the ADA does not require that an employee whose unacceptable behavior threatens the safety of others be retained, even if the behavior stems from a mental disability."[88]

B. *Courts Holding that "Interacting with Others" Is a Major Life Activity*

In *McAlindin v. County of San Diego*, the Ninth Circuit held that, for the purposes of ADA disability discrimination claims, interacting with others "is an essential, regular function, like walking and breathing, it easily falls within the definition of 'major life activity.'"[89] McAlindin

82. Soileau v. Guilford of Me., Inc., 105 F.3d 12 (1st Cir. 1997).
83. *Id.* at 15.
84. *Id.*
85. Calef v. Gillette Co., 322 F.3d 75 (1st Cir. 2003).
86. *Id.* at 83–86.
87. *Id.* at 86 (citing *Soileau*, 105 F.3d at 15–16).
88. *Id.* at 87.
89. McAlindin v. County of San Diego, 192 F.3d 1226, 1234 (9th Cir. 1999).

suffered multiple mental impairments, including panic and anxiety disorders, and he limited his social interaction to his family.[90] The court reversed the lower court's grant of summary judgment for the employer, in part, based on McAlindin's substantial limitation in the major life activity of interacting with others.[91] However, McAlindin's lawsuit had not claimed a substantial limitation on interacting with others, and neither party to the suit had briefed the question of whether interacting with others should qualify as a major life activity.[92] While recognizing the vagueness of applying "interacting with others" for ADA protection, the court stated, "nothing in the statutory test . . . makes vagueness the test for determining what is a major life activity."[93] The opinion also suggested that the court should not concern itself with the vagueness of "interacting with others" because other courts have approved the similarly vague major life activity of "caring for oneself."[94] Circuit Judge Trott expressed his concern with recognizing interacting with others as a major life activity in his partial dissent: "Not only is this 'disability' vague, but it's bizarre, ominous, and wholly outside of the group of serious disabilities Congress intended to cover with this statute. Does this opinion suggest that a person's foul temperament may no longer be a reason to deny that person a job?"[95]

The Ninth Circuit later cited *McAlindin* for the proposition that interacting with others is a major life activity without further discussing the legal question.[96]

In *Jacques v. DiMarzio, Inc.*, the Second Circuit recognized interacting with others as a major life activity in a bipolar employee's challenge to jury instructions regarding her ADA claim that her employer terminated her for being "regarded as" disabled.[97] The court first explored the split between the Ninth and First Circuits on the question of whether interacting with others is a major life activity and the numerous cases in

90. *Id.* at 1230–31, 1235.

91. *Id.* at 1233.

92. *Id.* at 1240 (Trott, J., concurring in part and dissenting in part).

93. *Id.* at 1234–35 (majority opinion). In contrast, two Supreme Court opinions have pointed to the importance of strict interpretation and demanding standards when determining disability under the ADA. Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184, 197 (2002); Sutton v. United Air Lines, Inc., 527 U.S. 471, 487 (1999).

94. *McAlindin*, 192 F.3d at 1235.

95. *Id.* at 1240 (Trott, J., concurring in part and dissenting in part).

96. Head v. Glacier Nw., Inc., 413 F.3d 1053, 1060 (9th Cir. 2005) (citing *McAlindin*, 192 F.3d at 1230).

97. Jacques v. DiMarzio, Inc., 386 F.3d 192, 203–04 (2d Cir. 2004).

other circuits that declined to address the question altogether.[98] The court agreed with the First Circuit that "'get[ting] along with others' is an unworkably subjective definition of a 'major life activity' under the ADA."[99] Then, after noting the challenges posed by accepting such a highly inclusive activity as a major life activity, the court decided to do so because the Supreme Court has accepted "similarly overarching 'major life activities,'" such as "caring for one's self."[100]

Even the two circuits that have found interacting with others is a major life activity disagree about the standard for measuring whether a plaintiff's ability to interact with others is substantially limited. The Ninth Circuit set the bar for proving substantial limitation lower than the Second Circuit's more demanding standard.

In *McAlindin*, the Ninth Circuit held that a substantial limitation in the ability to interact with others must be "'characterized on a regular basis by severe problems, for example, consistently high levels of hostility, social withdrawal, or failure to communicate when necessary.'"[101] The court noted that a "cantankerous" personality does not create a substantial limitation and that "[m]ere trouble getting along with co-workers is not sufficient to show a substantial limitation."[102]

The Second Circuit, in *DiMarzio*, rejected the Ninth Circuit's distinction in *McAlindin* between "cantankerous" and "hostile," noting that in many jobs hostility and argumentativeness can be useful professional traits.[103] A plaintiff only meets the *DiMarzio* test for substantial limitation when the impairment "severely limits the plaintiff's ability to connect with others, e.g., to initiate contact with other people and respond to them, or to go among other people– at the most basic level of these activities."[104] A plaintiff who is only limited to communicating in a manner that is "inappropriate, ineffective, or unsuccessful" is not

98. *Id.* at 202 & n.8.

99. *Id.* at 203.

100. *Id.* at 202 (citing Bragdon v. Abbott, 524 U.S. 624, 638–39, 659, 665 (1998)). Notably, the *Bragdon* Court did not expressly adopt or accept "caring for one's self" as a major life activity; rather, the Court mentioned that the Rehabilitation Act's list of possible major life activities was non-exhaustive and not dispositive to the holding of the case. *Bragdon*, 524 U.S. at 638–39.

101. *McAlindin*, 192 F.3d at 1235 (quoting EQUAL EMPLOYMENT OPPORTUNITY COMM'N, EEOC ENFORCEMENT GUIDANCE ON THE AMERICANS WITH DISABILITIES ACT AND PSYCHIATRIC DISABILITIES 3 (1997)).

102. *McAlindin*, 192 F.3d at 1235.

103. *DiMarzio*, 386 F.3d at 203.

104. *Id.*

substantially limited.[105]

In the recent case of *Bell v. Gonazales*, the District Court for the District of Columbia followed the *DiMarzio* test for determining whether the plaintiff's interaction with others was substantially limited.[106] First, the court rejected the employer's argument that the court should follow the First Circuit and held that interacting with others is too subjective and unworkable.[107] The court instead addressed the employer's challenge to the concept's subjectivity by using the Second Circuit's more demanding test for substantial limitation.[108] The court held that the substantial limitation test "should be objective and strict to avoid creating an unbounded and subjective definition of disability."[109] Noting Bell's ability to shop for groceries, do his own banking, maintain a separate wedding photography business, and teach others in a classroom environment, the court held that Bell's mental impairment did not sufficiently limit his ability to interact with others for him to qualify as disabled under the ADA.[110]

In *Soileau*, the First Circuit noted that even if interacting with others was a major life activity, the impairment must be extraordinary and long-lasting in order to satisfy the "substantially limits" requirement.[111] Soileau's inability to deal with crowded places was no different from many normal individuals' preferences.[112] Further, the duration of Soileau's impairment was too acute and temporary– he had one depressive episode requiring a five-week work absence and another episode causing him to request relief from running work meetings for four months.[113]

C. *Courts Declining to Decide Whether "Interacting with Others" Is a Major Life Activity*

Numerous courts have declined to decide the question of whether interacting with others is a major life activity. In *Rohan v. Networks Presentations LLC*, the Fourth Circuit affirmed summary judgment for the employer and declined to resolve the question of whether interacting with others is a major life activity because the plaintiff would not have been able

105. *Id.*
106. Bell v. Gonzales, 398 F. Supp. 2d 78, 88 (D.D.C. 2005).
107. *Id.* at 87–88.
108. *Id.* at 88.
109. *Id.*
110. *Id.* at 88–89.
111. Soileau v. Guilford of Me., Inc., 105 F.3d 12, 15–16 (1st Cir. 1997).
112. *Id.* at 16.
113. *Id.*

to satisfy the substantial limitation requirement.[114] The *Rohan* court did, however, point to its previous expression of doubt on the question of whether interacting with others is a major life activity[115] and cited *Soileau*'s concern for the subjective and elastic nature of the concept of interacting with others.[116]

In *Emerson v. Northern States Power Co.*, the plaintiff appealed a lower court's grant of summary judgment for the employer, claiming that her head injury impaired her abilities in memory, concentration, and interacting with others.[117] The Seventh Circuit refused to consider the plaintiff's claim that her listed activities qualified as major life activities because the plaintiff failed to present any support for her contention.[118] Instead, the court adopted the lower court's approach by "treat[ing] memory, concentration, and interacting with others as activities that *feed into* the major life activities of learning and working."[119]

The Eighth Circuit treated the issue similarly in *Heisler v. Metropolitan Council* by declining to consider interacting with others a major life activity because the plaintiff failed to provide evidence of substantial limitation.[120] The court did, however, cite to an earlier case in the circuit that approvingly discussed the *Emerson* approach to interacting with others as a subset that feeds into the actual major life activities of learning or working.[121]

In *Steele v. Thiokol Corp.*, the Tenth Circuit also declined to address the question because the plaintiff was not substantially limited in his ability to get along with all other people.[122] The court noted that Steele's difficulties were similar to the plaintiff in *Soileau*, in that Steele's obsessive-compulsive disorder and depression caused him severe problems getting along with many of his co-workers.[123] The court then referred to

114. Rohan v. Networks Presentations LLC, 375 F.3d 266, 274 (4th Cir. 2004).

115. *Id.* (citing Davis v. Univ. of N.C., 263 F.3d 95, 101 n.4 (4th Cir. 2001)).

116. *Id.* (citing *Soileau*, 105 F.3d at 15).

117. Emerson v. N. States Power Co., 256 F.3d 506, 511 (7th Cir. 2001).

118. *Id.*

119. *Id.* (emphasis added).

120. Heisler v. Metro. Council, 339 F.3d 622, 628–29 (8th Cir. 2003).

121. *Id.* at 628 (citing Moysis v. DTG Datanet, 278 F.3d 819, 825 (8th Cir. 2002)).

122. Steele v. Thiokol Corp., 241 F.3d 1248, 1255 (10th Cir. 2001); *see also* Doebele v. Sprint/United Mgmt. Co., 342 F.3d 1117, 1131 (10th Cir. 2003) (declining to decide whether interacting with others is a major life activity because the plaintiff was able to get along with people outside of the workplace).

123. *Steele*, 241 F.3d at 1255.

McAlindin and *Soileau* for the proposition that substantial limitation requires trouble interacting with people within and without the workplace rather than just a difficulty getting along with co-workers.[124]

IV. HOW AN EMPLOYER DEFENDS AGAINST AN "INTERACTING WITH OTHERS" DISABILITY CLAIM

An employer has three defenses for cases in which plaintiffs allege that an employer discriminated against them because of their mental illness, relying on a claim that their substantial limitation in interacting with others qualifies them as disabled. First, the employer should argue that as a matter of law, interacting with others is not a major life activity. If this argument fails, the employer should argue that even if a plaintiff is so severely limited in his ability to interact with others that he meets the appropriate substantially limited standard, he is not otherwise a qualified individual because there are no reasonable accommodations available to allow him to perform the essential job functions. Finally, an employer should argue that a mentally ill employee so hostile and severely limited in his ability to interact with others does not meet the employer's qualification standards of being able to take orders from superiors, work in a team-based environment, or interact with customers. Additionally, in the appropriate case, the employer should argue that the individual may present a danger to the workplace.

A. *Argue that "Interacting with Others" Is Not a Major Life Activity (Summary Judgment or Failure to State a Claim)*

First, an employer should argue that plaintiffs who base their disability on interacting with others have failed to state a claim because that activity is not appropriately considered a major life activity for ADA purposes.

The EEOC Compliance Manual takes an overbroad approach to major life activities by adding to the list such immeasurable and vague mental and emotional processes as concentrating and interacting with others.[125] Courts are not required to defer to the Interpretive Guidance because it is an agency informally defining a term– disability– that Congress did not grant the EEOC authority to define.[126] This non-binding

124. *Id.* (citing McAlindin v. County of San Diego, 192 F.3d 1226, 1235 (9th Cir. 1999); Soileau v. Guilford of Me., Inc., 105 F.3d 12, 15 (1st Cir. 1997)).

125. EEOC COMPLIANCE MANUAL § 902.3(b) (2002).

126. *See supra* notes 12–14, 30–31 and accompanying text.

guidance expands the list of major life activities from the current EEOC regulations, which may already be overbroad. Again, the EEOC may not have the authority to define disability in the first place,[127] but even if it did, the Supreme Court has voiced concern about the regulations including working as a major life activity.[128] While the Supreme Court has not formally invalidated working as a major life activity, the Court's concerns parallel the First Circuit's reasoning for refusing to recognize interacting with others as a major life activity.

Including interacting with others as a protected major life activity presents problems in its application and effect. A person's ability to interact with others is a fluctuating skill and personality trait that eludes objective measurement. In *Bragdon*, Chief Justice Rehnquist expressed concerns about accepting reproduction as a major life activity because reproduction itself is not an activity, but rather a process composed of "numerous discrete activities."[129] Interacting with others raises similar concerns because interaction is a multi-part process, involving other people's actions and involving the individual's ability to speak, think, and hear. Perhaps the more appropriate basis for determining disability due to mental illness would be a measurable activity that feeds into a person's ability to interact with others, such as thinking or speaking.

B. *Argue that the Plaintiff Is Not a "Qualified Individual" and No Reasonable Accommodation Exists (Summary Judgment)*

If a court adopts interacting with others as a major life activity, the employer should then argue for the stricter "substantial limitation" standard suggested by the numerous circuit courts of appeals that have considered but as of yet, declined to decide whether interacting with others is a major life activity.[130] The vagueness of "interacting with others" demands a strict standard, or else the courts would have to grant ADA protection to an immense population of individuals whose diagnosed mental illness arguably contributes to their sour, awkward, or hostile personalities. Further, the Supreme Court's reasoning in *Sutton* for maintaining strict standards for ADA protection applies here.[131] For the same reasons Congress could not have intended the ADA to cover all

127. *See supra* notes 12–14 and accompanying text.

128. Sutton v. United Air Lines, Inc., 527 U.S. 471, 492 (1999).

129. Bragdon v. Abbott, 524 U.S. 624, 658 n.2 (1998) (Rehnquist, C.J., concurring in the judgment and dissenting in part).

130. *See supra* Part III.C.

131. *Sutton*, 527 U.S. at 488–89.

individuals with some level of vision impairment,[132] Congress could not have intended to cover all individuals with a mental illness that causes outwardly manifested stress or inhibits social skills.

Some mentally ill plaintiffs might be able to meet the stricter standard for substantial limitation by showing a severe, pervasive, and consistent inability to interact with others. While these plaintiffs might meet the initial requirement of their prima facie case by showing that they have an actual disability,[133] they would then face a major hurdle proving that they were otherwise qualified for the position.[134] If an individual is completely unable to interact with a supervisor, customer, or co-worker, that individual would likely not be qualified to work in most modern workplaces.[135] In a contract employment context, insubordination, fighting with co-workers, and upsetting customers are all generally considered just cause for termination. While just cause is a different standard for employment decisions, the types of contractually terminable behaviors mentioned above are the behaviors that individuals who are severely limited in their ability to interact with others would likely present in the workplace.

It would be a rare case in which an arrangement could reasonably accommodate this type of extreme interpersonal dysfunction. An individual who was incapable of non-hostile interaction certainly could not serve customers. In order to accommodate individuals' inability to interact with others in the workplace, disabled individuals might request accommodations allowing them to work from home. However, this arrangement would require a heightened level of supervision, and if individuals are unwilling or unable to interact with their supervisor, then the arrangement would present an undue hardship on the employer.

C. *Argue the Affirmative Defenses of Business Necessity and Direct Threat (Summary Judgment)*

Even if a court determines that a disabled plaintiff has established a prima facie case, the employer may turn to the affirmative defenses found in Title I of the ADA.[136] Specifically, an employer might successfully argue that the plaintiff fails to meet an employment qualification standard that

132. *See id.* at 487.
133. *See supra* Part II.A.
134. *See supra* Part II.E.
135. *See supra* note 51.
136. 42 U.S.C. § 12113 (2000).

employees have the ability to interact cordially, or at least in a non-hostile and non-confrontational manner, in the workplace. A court will accept this qualification standard, even if the qualification tends to exclude disabled individuals from the workplace, as long as the employer can show that the standard is job-related and consistent with business necessity. Numerous courts have already held that a job requirement that individuals be able to interact in the workplace is "job-related and consistent with business necessity."[137] This is not to say that employers may generally set a qualification standard requiring that employees be socially apt. However, it is reasonable for most, if not all, employers to require some minimum standard of social ability for its employees in order to operate its business. If the individual is so extremely disturbed that an employer reasonably believes that the disability might cause that individual to act out in a violent manner, then the employer is also entitled to the affirmative "direct threat" defense.[138] No employer is required to employ individuals who threaten to unleash their hostility on co-workers or customers. Additionally, the employer may invoke the direct threat defense to protect the disabled individual.[139] If the disabled individual is suicidal to the point that workplace stress may lead that individual to injure himself, then that employer should be able to defend any adverse employment action based on their concern for the individual's safety.

IV. CONCLUSION

The ADA does not protect a mentally ill individual from adverse employment action when the only manifestation of his mental illness is a severe limitation on his ability to interact with others. Courts should not accept interacting with others as a major life activity for the purpose of defining whether a plaintiff is disabled for the purposes of ADA protection because interacting with others is vague, subjective, and not measurable. Even if courts decided to accept interacting with others as a major life activity, the only workable standard to prevent dramatically extending ADA protection to the millions of Americans with limited personal skills would require extending the standard to severe limitation in interpersonal skills. Plaintiffs who meet this strict standard for limitation of their ability to interact with others would then fail to meet the "otherwise qualified" prong of their prima facie case or would likely lose to an employer's affirmative defense based on a job-related qualification standard. The

137. *Id.* § 12113(a); *see also supra* note 51.
138. 42 U.S.C. § 12113(b).
139. *See supra* note 75 and accompanying text.

unfortunate result is that a mentally ill individual with severe limitations will not enjoy the same ADA facilitation as other disabled individuals as they try to integrate into society. The severely mentally ill frequently suffer from homelessness and substance abuse and sit as the truly vulnerable and weak in our society. While it is not appropriate for the federal government to mandate that businesses employ such individuals, some level of government should provide programs to support these severely disabled individuals. Americans must remember that such members of our society are rarely able to exercise political strength, so we should collectively consider constructive and reasonable ways to support the severely mentally ill.