

## **Monitoring Spiritual and Mental Health for Religious Workers Without Violating the ADA**

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A new Sixth Circuit case, *Kroll v. White Lake Ambulance Authority*, decided on August 22, 2012, potentially raises a new set of problems for churches and mission organizations. Requiring employees to get mental health counseling is likely a violation of the Americans with Disabilities Act except in certain narrow circumstances. Religious organizations should consider what circumstances apply and be prepared.

In *Kroll*, a part-time Emergency Medical Technician had an affair at work with a married co-worker and began to show signs of distress, which included some outbursts at work. For instance, one complaint said she was screaming on the phone while driving a loaded vehicle in emergency status with lights and sirens. She was instructed to get counseling to continue working. She did not return to work, but filed suit.

The question for the court was whether an instruction to get counseling was a “medical examination” under the statute (42 U.S.C. § 12112(d)(4)(A)) that prohibits employers from requiring a medical examination or inquiring about whether an employee has a disability, “unless such examination or inquiry is shown to be job-related and consistent with business necessity.” The employer argued that it was not a medical examination.

The court considered a seven-factor test provided by *EEOC Enforcement Guidance*, as well as the EEOC’s distinction between psychological tests that are designed to identify mental disorders or impairment (“medical examination”) and tests that measure personality traits (not “medical examinations”). After lengthy analysis, the court concluded that *Kroll* was ordered to counseling to uncover a mental health defect. This was impermissible unless there was a job-related business necessity. The case was remanded for the district court to consider the business necessity point.

Churches may be able to avoid this dilemma by defining job requirements in terms of expected behavior and spiritual qualifications that are objectively measurable. For instance, both having an affair and serious outbursts of temper might be legitimate cause for employment discipline in the faith context. (Even in the example above, the employer might have been better off focusing on the fact that the EMT was endangering the patient in the ambulance rather than sending her to counseling.) Also, pastoral counseling around character traits could be less likely a “medical examination.”

Mission organizations have the additional responsibility of making sure their personnel function in stressful and dangerous situations. For some assignments, they may need to write job descriptions that require job-related mental stability as a business necessity. This could allow the option to call someone home for mental illness, or to require a “medical examination” and treatment for the illness.

The Church should regard with compassion conditions such as mental illness and depression. Legally, religious organizations usually may not discriminate on the basis of

such disabilities. But they may need to take steps to protect the spiritual integrity of their mission and to keep workers safe on the field.