# Getting What You Don't Ask For – The Perils Of ADA Accommodation By Inference

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A case out of the federal court of Maine provides a useful reminder that employers cannot put blinders on when it comes to the ADA and requests for accommodation. The case, *Heath v. Brennan* (Case No. 2:13-cv-386-JDL), involved a long-time postal employee who developed tendinitis in the early 1990s, forcing him to wear arm braces at work. His co-workers teased him about the arm braces, which ranged from the mild ("gave him a hard time") to the salacious ("he needed the braces because he had been masturbating"). His supervisors also got into the act; on one occasion when a supervisor was asked about accommodating plaintiff, he responded, "I'll give him accommodations – *I'll kick his ass*." Unsurprisingly, this behavior led to the plaintiff filing EEOC complaints, which in turn led to settlement agreements in which the postal service was required to educate his supervisors about his medical restrictions. As a side effect of the behavior he encountered, the plaintiff subsequently developed mental health issues, including PTSD, depression and anxiety. Several years later, the plaintiff's supervisor tasked him with running an errand to another post office and told him to retrieve a key from an employee in the break room. The plaintiff didn't want to go into the break room, fearing that he would be harassed by several employees. Instead, he asked another co-worker to get the key for him. The co-worker agreed, but was stopped on his way to the break room by the supervisor. The supervisor then waved the plaintiff to come over where he and the co-worker were talking. The plaintiff refused, not wanting to go near an area where he might run into others employees with whom he had problems in the past. Nevertheless, the plaintiff reluctantly walked over when the supervisor called him over a second time, asking the supervisor why he was calling on him over since the supervisor knew the plaintiff had "an issue." The plaintiff then offered to go get the paperwork documenting his restrictions. The supervisor first responded that he should "go get them," but then, as the plaintiff moved away, he "hollered" "never mind – *go home*." The plaintiff complied and never returned to work for the postal service. Thereafter, he filed an ADA claim, which alleged – among other things – that the postal service had failed to accommodate his mental disabilities. On summary judgment, the postal service argued that the plaintiff had no accommodation claim because he never made a formal request to accommodate a mental disability – and specifically that his supervisors were required to avoid stressful or unnecessary confrontations. The court rejected this argument, observing that while the duty to accommodate *usually* requires a request by the employee to trigger it – such a request was not always required. In the court's view, the necessity of a request diminished in a case where the employer knew or had reason to know of the employee's disability and attendant needs. In denying summary judgment, the court focused on the fact that the postal service had

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been provided information over time from the plaintiff's doctors about avoiding stressful situations and that this was sufficient to put it on notice of his need for accommodation. Further, the court also felt that the supervisor's conduct in "hollering" at the plaintiff and telling him to "go home" was enough for a jury to determine that he confronted the plaintiff in an unnecessary and stressful manner which failed to accommodate the emotional disability. The case provides several reminders and lessons for employers. First is the obvious – if your idea of accommodating disabilities is to kick the employee's "ass" you're doing it wrong. Second (and equally obvious), is the failure to follow through on the employee's past complaints. If you have an employee that already has complained to the EEOC and the employer already has been required by the EEOC to instruct supervisors about the plaintiff's medical restrictions, the employer (a) should comply with the mandate, (b) should pay close attention to letters and communications from his doctors and (c) should make sure the supervisors know to tread carefully when it comes to this particular employee. Third, employers cannot focus solely on formal requests for accommodation by employees to escape liability under the ADA. Accommodations are intended to be an interactive process, and as this case illustrates, if an employer knows or has reason to know of a qualifying condition – this can be sufficient to put the employer on notice. Fourth – don't "holler" at your employees. It's not polite.