

Employees with Psychiatric Disabilities Sometimes Pose Direct Threat - But When?

Ellen Storch, partner in KD's Long Island office, is quoted in an article published by Society for Human Resource Management on May 5, 2015. In the article, Ellen discusses psychiatric disabilities, stemming from the Germanwings crash.

"It often is difficult for employers to assess whether an employee poses a safety threat as a matter of law, and what types of accommodations—if any—are required to be granted," said Ellen Storch, an attorney with Kaufman Dolowich & Voluck in Woodbury, N.Y. "Certain industries are regulated by federal agencies, such as the Nuclear Regulatory Commission or the Department of Transportation. These agencies have guidelines that require employers to remove employees from the workplace if the person poses a safety threat. In industries without these types of regulations, an employer can lawfully terminate an employee under the ADA, if the employee is unable to show that they are qualified for the job, due to safety concerns." But she emphasized, "The burden is on the employer to show the safety threat is significant."