ADA Hypothetical

Your bank hired Josh Justison as an assistant branch manager for a North Carolina branch in June of 2023. In early December 2023, Josh fell while walking across the branch lobby. He broke his right wrist in three places and was out on FMLA leave for eight weeks. He returned to work in February of 2024.

In May of 2024, Josh applied for and received a transfer to Virginia where your bank was opening new branches. The transfer was scheduled for October 2024. Josh fell four more times over the summer. Medical testing resulted in a diagnosis of epilepsy. Josh's doctor told him lack of sleep and relaxation, fatigue, and stress exacerbated his condition, and suggested Josh request a schedule that gave him weekends off and permitted him sixteen hours at home to unwind from work stress, to sleep, and to have plenty of time to get to work without rushing. Josh made the request to his North Carolina branch manager who, without consulting you, scheduled Josh on a fixed 9:00 am to 5:00 pm shift. The manager scheduled two other assistant managers to work Saturdays as well as earlier and later hours that the branch was open. Josh did not have any more falling incidents after the schedule request was agreed to by his manager.

Josh transferred to Virginia in October of 2024. He requested the schedule above from his new manager, Margie Mean. Margie said she would not schedule Josh as requested. She told Josh she was unwilling to put the burden of unpopular hours on herself or the other assistant manager, and a manager or assistant had to be present all hours the branch was open.

Josh contacts you and asks how to get the schedule his doctor suggested. He says his epilepsy is reasonably controlled with medication and the appropriate schedule, and he thinks this accommodation is reasonable. He also asks for FMLA paperwork. He says he plans to take intermittent FMLA leave for Saturdays, 7:00 am to 9:00 am, and 5:00 pm to 7:00 pm if Margie schedules him to work those times.

You contact Margie to discuss Josh's requests. In addition to the burden of taking on the hours Josh does not want to work, says Margie, she has seen movies of epileptic incidents and thinks they would frighten her customers and employees. In addition, the assistant manager position would require Josh to stand on short ladders to reach the highest safe deposit boxes. What if he falls from a height? In summary, Margie will do what you tell her but is really not happy about Josh as an employee, let alone as an assistant manager.

1. **What is your response to Josh's schedule accommodation request? What additional information can you request? Is the burden on co-workers a permitted part of your evaluation? Is there anything you can or should do in response to Margie's concerns about the reaction of customers and employees? What about concerns that Josh could fall from the ladder?**

2. **What is your response to Josh's FMLA request? What information can you request? What documentation can you require? Can you do anything about his plan if Margie doesn't meet his requests?**

<u>Family and Medical Leave Act Hypothetical</u>

Rebecca Scott, a seasoned branch manager, contacts you in frustration regarding Bob Jones, a long-time teller at the bank. It's early October, and Bob has already exhausted his 12 weeks of FMLA leave for the year, which he used to care for his wife—a disabled Army veteran with a 90% VA disability rating due to physical and mental injuries sustained in Iraq. He's also used all of his PTO.

Late last night, Bob called Rebecca to explain that his wife had experienced a severe PTSD episode triggered by news that her grandfather was in intensive care in New York and is not expected to survive. She was unable to drive herself due to her mental state, and Bob, as her primary caregiver, felt compelled to take her. He requested additional leave to transport her and support her during this crisis. Rebecca denied the request, citing that:

- The grandfather's illness does not qualify for FMLA leave.
- Bob has exhausted his FMLA entitlement.
- She's tired of scrambling to cover his absences, which she feels are frequent and disruptive.

Bob responded that he was already several hours north on I-95 and would miss the next two workdays. Rebecca is livid. She believes Bob is being insubordinate, and she questions the legitimacy of his wife's PTSD, saying, "My father served in Vietnam and never had any psychological issues. This PTSD stuff is hogwash."

Rebecca wants to terminate Bob immediately for:

- Exhausting his leave entitlements.
- Taking unauthorized time off.
- Being insubordinate.

1. **What are the bank's obligations under FMLA and ADA in this scenario?**
2. **Does Bob's situation qualify for Military Caregiver Leave, even though he's exceeded standard FMLA?**
3. **How should the bank handle Rebecca's comments and potential bias against mental health conditions?**
4. **What are the risks of terminating Bob now, and what steps should HR/legal take before making a decision?**
5. **How can employers better train managers to handle mental health-related leave and caregiver accommodations?**

<u>Workplace "Harassment" Hypothetical</u>

The Super Duper Bank has a highly profitable commercial loan department in its Suburbia branch. The team is successful, in large part, because there is a nucleus of 4 experienced employees who have worked together over the course of many years.

- Matt (age 58, white male) is the manager of the team. He is a "super star."
- Big Al (age 44, white male) is a commercial loan officer.
- Eddie (age 51, white male) works as a loan underwriter.
- Sally (age 62, Hispanic female) works as a loan administrator.

Without consulting the team, Recruiter Roxy recently hired Barbara, age 23, and placed her to work with them at Suburbia. Barbara is a soft-spoken, attractive, single Black female.

In the course of the first month or so of employment, Barbara was stunned at the profanity, banter on sexual matters, and occasional off-color "jokes" among the team. For example, Big Al is recently divorced. He often boasts about his "awesome sex life". The team regularly offers crude commentary about the candidates on Big Al's various dating apps.

Big Al has started calling Barbara "Beyonce" because she is so "hot." The others laugh.

Eddie observes that Barbara is not comfortable with the work environment. He decides not to take any action because he does not view this as "*his*" problem.

A couple Fridays ago, Big Al asked Barbara if she wanted to go out for a drink with him after work so that he could tell her the "secrets" as to how to excel at Super Duper. Barbara declined.

The following Monday morning, Barbara nervously approached Matt in his office. She told him she did not like the "juvenile behavior" and the "sex talk" in the office, especially from Big Al. Matt chuckled and told her "Big Al is harmless" and that the team just likes to "blow off steam."

In the last couple of weeks, Barbara made some careless mistakes. Matt and Big Al both reacted poorly. Big Al cussed her out (which is normal conduct for him—he has a temper!) Barbara confided to Sally one day during lunch that she believed Big Al has been much harder on her and has assigned her work for which she has not been properly trained.

Matt emailed Super Duper corporate Human Resources today and demanded that Barbara be fired during her introductory period because she is not performing well, and is not a good fit. Matt also questioned why Roxy made such a foolish "DEI" hire.

How should HR respond to Matt's directive?