

ADA

Your bank, headquartered in Maryland, hired Mark Robinson as an assistant branch manager for a Pennsylvania branch in June of 2023. In early December 2024, Mark 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 2025.

In May of 2025, Mark applied for and received a transfer to Virginia where your bank was opening new branches. The transfer was scheduled for October 2025. Mark fell four more times over the summer. In late July 2025, Mark underwent medical testing that resulted in a diagnosis relapsing-remitting multiple sclerosis. Mark's doctor told him lack of sleep, fatigue, and stress exacerbated his condition, and suggested he request a schedule that gave him weekends off and permitted him a minimum of sixteen hours at home to unwind from work stress, sleep, and to have plenty of time to get to work without rushing. Mark made the request to his Pennsylvania branch manager who, without consulting you, scheduled him 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. Mark did not have any more falling incidents after the schedule request was agreed to by his manager.

In October, as planned, Mark transferred to Virginia. He requested the schedule above from his new manager, Margie Smith. Margie said she would not schedule Mark as requested, but could accommodate not scheduling him on Saturdays. Initially to "not make waves", Mark accepted this, however, in early January 2026, he approached Margie and said that this schedule was "not working for him" and re-requested his original accommodation of 9:00 am – 5:00 pm, Monday-Friday only. Margie told him that it was already a burden on her and the assistant manager to have to absorb all Saturdays and she was not willing to shift him to these hours, but they could discuss him taking a longer lunch break. Margie also reminded him that a manager or assistant manager had to be present all hours the branch was open and that he was aware of this policy when accepting the role.

Mark contacts you and asks how to get the schedule his doctor suggested. He says, at the present time, his MS 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 Mark's requests. Margie tells you that he already is not working Saturdays and has been working early & late hours for several months. His work has not been impacted by MS symptoms and she believes he is taking advantage of bank policy.

1. What is your response to Mark'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?

2. What is your response to Mark'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?

The AI Hiring Tool That No One Fully Understood

A regional bank operating throughout Virginia and Maryland is struggling to fill commercial banking, lending, and branch leadership positions. To improve efficiency and reduce recruiting costs, the organization implements a new AI-powered hiring platform.

The vendor markets the system as a way to:

- Screen and rank applicants
- Identify high-potential candidates
- Conduct automated video interview assessments
- Improve hiring consistency
- Reduce recruiter workload

During meetings with the vendor, bank leadership learns that the platform evaluates candidates using multiple data points including:

- Resume screening and ranking
- Analysis of job history and career progression
- Automated scoring of video interviews
- Assessment of communication style and speech patterns
- Comparison of applicants against profiles of high-performing current employees

Candidates are then given a score ranging from 1 to 100. The vendor assures the bank that the algorithm has been validated and is designed to remove human bias from hiring decisions.

The bank implements the system for a six-month pilot. During this time, hiring managers are enthusiastic with how much faster they can work through the resume submissions and begin to treat the AI score as the primary screening mechanism. Many candidates with low scores are rejected before speaking with a human recruiter. At the end of the six-month pilot, the COO reports "We've reduced time-to-fill by nearly 40%, recruiters love it, and we're interviewing significantly fewer candidates to fill the same number of openings."

The bank expands the tool across multiple business lines.

Several months later, the CHRO receives a letter from outside counsel representing an unsuccessful applicant.

The applicant alleges that:

- She was denied an opportunity to interview despite meeting all posted qualifications.
- The AI screening process discriminated against applicants over age 50 (she is 55).
- The bank failed to adequately explain how hiring decisions were being made.

The letter prompts an internal audit which uncovers the following:

- Applicants over age 50 receive significantly lower average scores.
- Candidates with employment gaps are disproportionately screened out.
- Applicants who report disabilities requiring accommodations advance at lower rates.

- Veterans are being selected less frequently for interviews than anticipated based on application volume.

Further investigating reveals that:

- Recruiters rarely override AI recommendations.
- Some managers refuse to review applicants scoring below a certain threshold.
- Several hiring decisions were made without any human interview.
- Documentation consistently references "system recommendation" as the reason candidates were eliminated.

Title VII and Disparate Impact

- If the AI system is creating statistically different outcomes among protected groups, who bears liability: the bank, the vendor, or both?
- Does it matter that the bank relied on the vendor's assurances that the tool was unbiased?
- What adverse impact testing would you expect a reasonable employer to perform?
- How would the EEOC likely analyze this situation?

ADA Considerations

- If applicants with disabilities are advancing through the process at lower rates, what obligations does the employer have?
- How should employers evaluate AI tools that assess speech patterns, communication style, facial expressions, or response times?
- What accommodations should be available for applicants participating in AI-assisted interviews?

Age Discrimination

- If older applicants are disproportionately screened out, what evidence would a plaintiff need to establish a viable claim?
- How should employers validate AI systems that rely on historical performance data?

The High-Performer, the Medical Leave, and the Retaliation Claim

Sarah Johnson is a Vice President and leader of the bank's Treasury Management division. She has been with the organization for eight years and is viewed as a strong relationship manager with deep client connections. She oversees a team of 12 employees and is responsible for a strategic initiative that is expected to generate significant non-interest income over the next two years.

For several years, Sarah's performance evaluations have reflected ratings "Meets Expectations". While she has consistently delivered results, there have been recurring comments in annual reviews regarding delegation, responsiveness, and project management. These concerns were discussed informally but never escalated to a formal performance improvement process.

Seven months ago, Sarah was diagnosed with a serious medical condition. She requested and was approved for six weeks of protected leave. During her absence, other executives assumed responsibility for several key projects and discovered that some initiatives were behind schedule, vendor contracts had not been finalized, and multiple direct reports expressed concerns about communication and decision-making within the department. Leadership chose not to address those concerns with Sarah while she was on leave, believing it would be inappropriate to do so.

When Sarah returned from leave, the executive team was supportive and publicly welcomed her back. They did not address the performance issues they discovered during her leave right away. However, within three months, concerns began surfacing again:

- A major treasury product launch missed its implementation deadline.
- Two high-potential employees transferred to other departments, citing leadership frustrations.
- Internal business partners complained that requests were not being answered promptly.
- The CFO expressed concern that strategic initiatives were moving too slowly.
- A key corporate customer escalated concerns after receiving inconsistent communication from Sarah's team.

Sarah's manager began documenting performance concerns and involving HR in coaching conversations.

Four months after her return, HR recommended placing Sarah on a formal Performance Improvement Plan. The day before the PIP was to be delivered, Sarah submitted documentation from her physician requesting workplace accommodations, including:

- A modified schedule
- Flexibility for periodic medical treatments
- Reduced travel commitments
- Additional remote work flexibility

The accommodation request was approved and implemented. When Sarah received the PIP, she became visibly upset and stated: "This is exactly what I was afraid would happen when I took leave."

During the meeting, she further stated: "No one raised these concerns before my medical leave. Now suddenly everything is a problem. This feels retaliatory."

The following day, Sarah filed an internal complaint alleging discrimination and retaliation related to her medical condition, leave of absence, and accommodation request.

As HR investigates, they discover that while conversations on performance concerns occurred during prior evaluations, regular feedback was not given or documented, and formal documentation only began after Sarah returned from leave.