

Stress as a Disability

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Prohibited Actions

- No discrimination based on disability (e.g., hiring, firing, discipline, training, etc.)
- No retaliation for exercising rights
- Failure to make a reasonable accommodation
- No illegal medical inquiries



ARE THERE ADA PROTECTIONS FOR STRESS?

Defining a Disability:

- a physical/mental impairment that substantially limits one or more major life activities (MLAs);
- a record of such impairment; OR
- being regarded as having such an impairment



Impairment that “substantially limits a major life activity”

- Interpret “substantially limits” broadly
 - Does not have to be a “severe restriction” or “significant restriction” as compared to the average person BUT not transitory (< 6 months) AND minor (hangnails, common cold, etc.)
 - Consider chronic conditions if untreated or when they flare up
 - Does not have to affect person’s job performance

Stress as a Mental Impairment

Stress associated with a diagnosed physical or mental condition

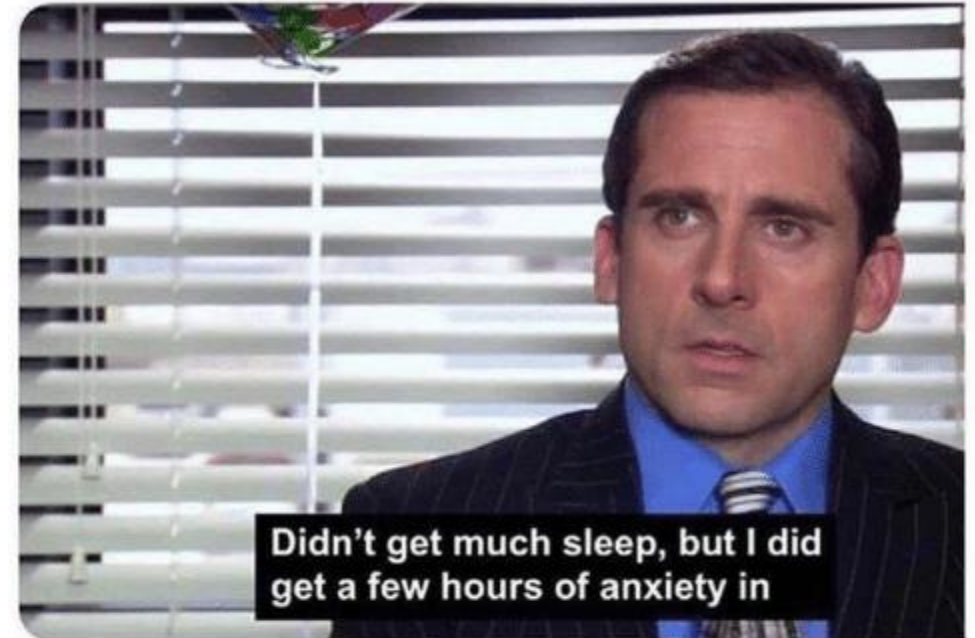
- Chronic stress
- Generalized anxiety disorder
- Posttraumatic stress disorder
- Depression



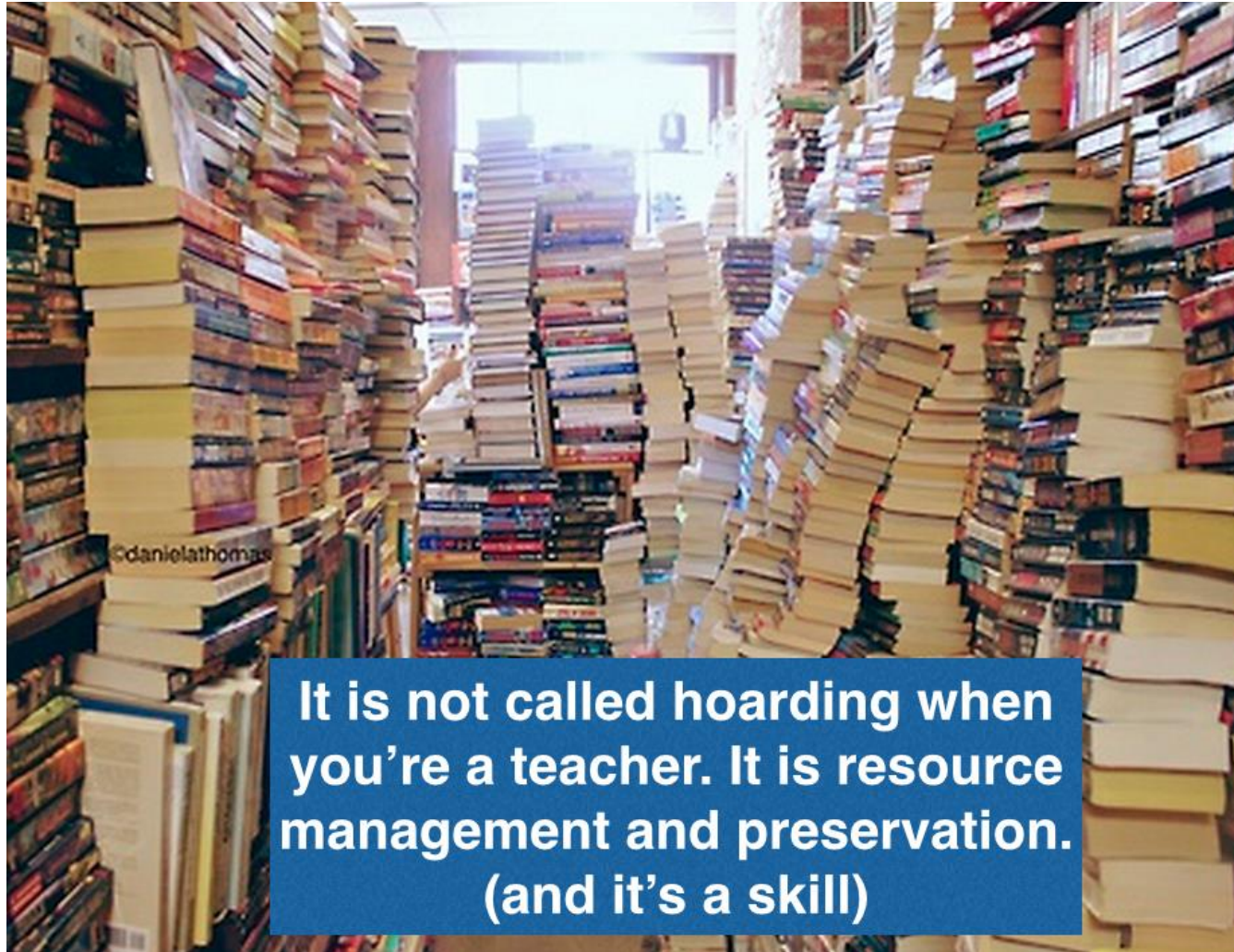
Work Related Stress – Likely Not ADA Protected

Woolf v. Strada – Second Circuit
(decided Feb. 6, 2020)

- Employee suffered from migraines caused by stressful supervisors
- No dispute migraines were a physical or mental impairment – but employee said he could do the same work in another location or under different managers
- ADA impairment must affect ability to perform a class or broad range of jobs
- No ADA protection



Work Related Stress – Don't Make Me Move Classrooms



Don't Make Me Move Classrooms

- Teacher got a doctor's note
- Doctor's orders: let her stay in her classroom
- Cited anxiety and depression

STEP 1: Employee Requests a Reasonable Accommodation

- Employee has to ask, but doesn't have to mention ADA
- No magic words:
- Can ask what their disability is but don't get hung up on whether you think that is a disability or if they need an accommodation

STEP 2: Interactive Process

- Talk to employee about what they want
- Don't assume what the employee can or can't do— let them tell you
- Don't assume the employee's disability is the same as someone else's
- Get a doctor's note

STEP 3: Is the Requested Accommodation Reasonable?

- Not reasonable if:
 - Eliminates an essential function (but may have to eliminate non-essential functions)
 - Poses direct threat of imminent harm
 - Poses an undue hardship (i.e., impossible, costs more than the job is worth)
 - Other employees' morale is not an undue hardship
- Are there other options?

Reasonable Accommodation Options

- Anything that enables employee to perform a job's essential functions
 - Reassignment to vacancy
 - Modified schedule
 - Leave
- Talk to the employee— but she doesn't always get her way
- Removing an essential function of a position is not required

Possible Accommodations for ADA-Protected Stress

- Regular breaks
- Tools for organization and minimizing distraction
- Additional time to perform tasks
- Increased feedback and check-ins
- Size/nature of assignment to student groups?

Service and Emotional Support Animals



“Ruff” Questions on Service and Emotional Support Animals

- Are the employee’s disability and the service dog’s function related? You can find out what service the dog (or horse) provides and how, if at all, it relates to employee’s duties.
- Will the dog’s presence improve the employee’s ability to perform her job?
- Is the dog sufficiently trained so she is not disruptive?
- Will allowing the dog to come to work present an undue hardship? (This last one is almost always no.)

Considering an Independent Medical Examination

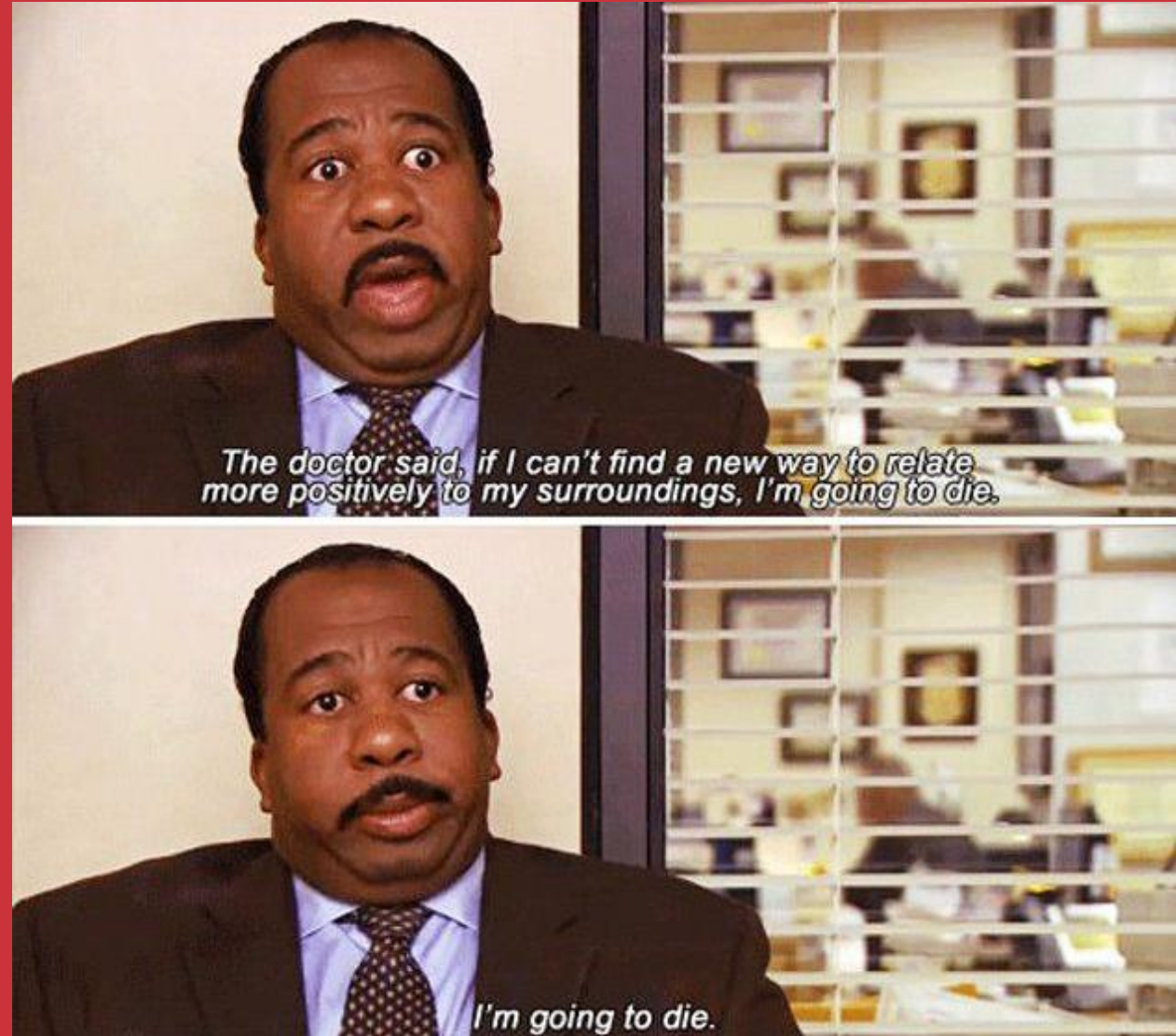
- An additional source for information on potential accommodations
- If the employee refuses an IME, sets up a defense to an ADA claim
- Proceed with caution – do you really want to know?

Leave vs. Accommodation

- FMLA: all about leave
 - Eligible employee gets leave-- period
 - Serious health condition may not be ADA disability
- ADA: non-discrimination, accommodation
 - Business needs matter
 - Leave not always a reasonable accommodation
 - Attendance can be an essential function

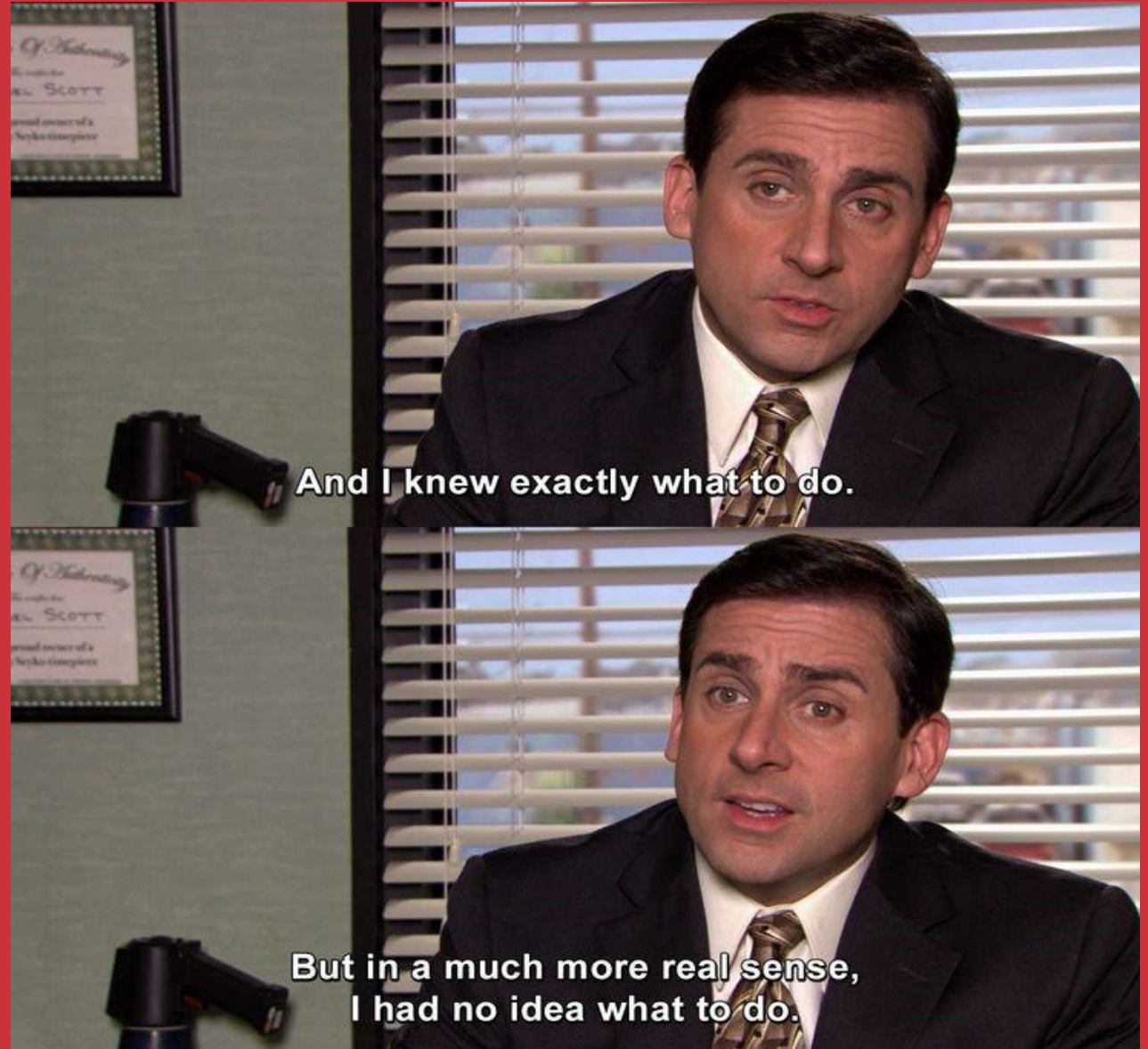
Scenario 1

- Employee who started three months ago claims supervisor is causing him to have panic attacks; no standalone medical diagnosis
- Employee seeks a transfer to another location or another supervisor
- Is employee entitled to an accommodation?
- Alternatively, is employee entitled to medical leave?



Scenario 2

- Employee who has worked for two years claims supervisor causes him to have panic attacks and has to receive ongoing psychiatric treatment as a result; no stand alone medical diagnosis
- Employee seeks a transfer or another supervisor
- Is employee entitled to an accommodation?
- Is employee entitled to medical leave for treatment, and/or time off due to the panic attacks?



Scenario 3

- Teacher has an independent diagnosis of IBS
- Teacher claims stressful classroom environment is causing her to have flare ups
- Is she entitled to an accommodation?
- Is she entitled to medical leave (assuming FMLA eligibility)?



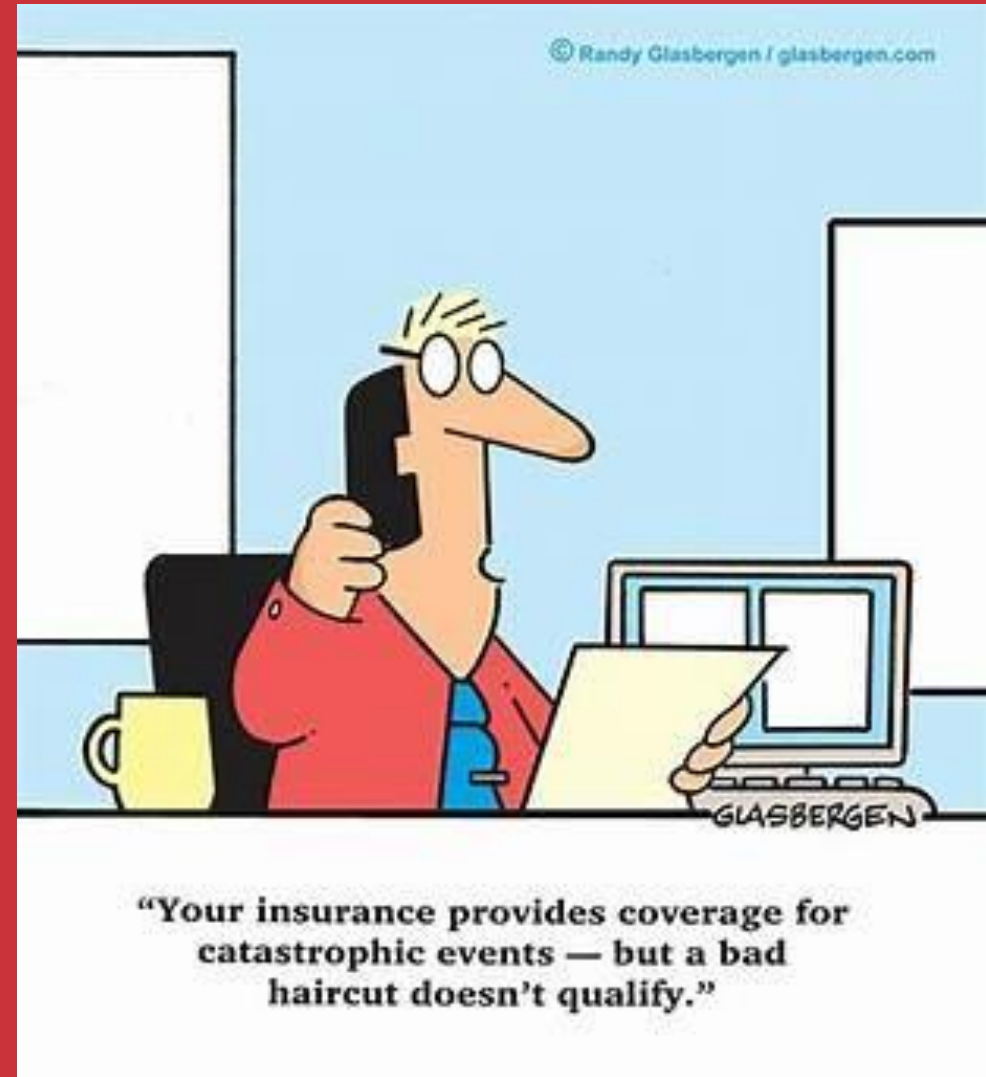
Scenario 4

- Staff member is not a good performer, and we start addressing her performance issues.
- She gets stressed because she is worried she is going to get terminated. She misses work due to the stress.
- Do we owe her an accommodation—
- Lower expectations? Job reassurance?
- Could she raise a “regarded as” ADA claim?



Scenario 5

- New classroom teacher right out of college has a diagnosis of generalized anxiety disorder and is a new hire for the district.
- Teacher anticipates that she is going to have anxiety flare ups in her classroom through the school year, but she has never taught before and school hasn't started.
- When and should the district consider accommodating her?



Scenario 6

- CNP worker, whose child is a student in our district, misses work frequently.
- The child is diagnosed with obsessive compulsive disorder and is struggling to stay at school.
- Do we owe the CNP worker an accommodation?
- Are there other legal landmines we need to worry about?



Questions?



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Thank you!