



## “Addicted to Internet” Protected Disability?

BY RITA RISSE, ATTORNEY AT LAW

**A**ccording to news reports, a man is suing IBM for wrongful termination saying that his use of Internet chatrooms is a disability — not unlike drug and alcohol addiction — and that IBM's decision to fire him for visiting chatrooms while at work violates the Americans with Disability Act (ADA).

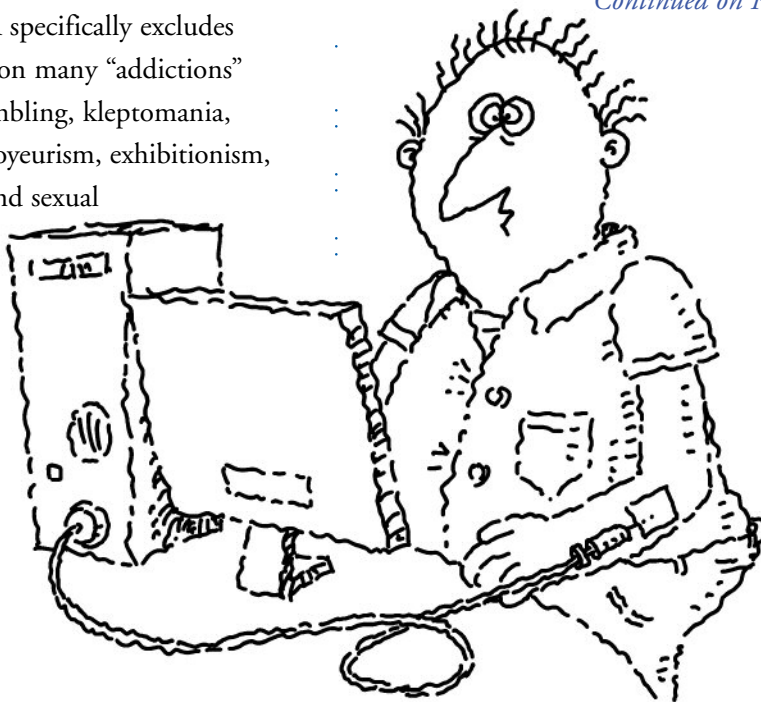
Your first reaction might be the same as Jay Leno's, “Shut up!” But is it possible he could have a valid claim? Let's look at the ADA.

The ADA specifically excludes from protection many “addictions” including gambling, kleptomania, pyromania, voyeurism, exhibitionism, pedophilia, and sexual behavior

disorders. Apparently the company contends he was visiting an “adult” chatroom, and therefore he is not protected by the ADA. However, the employee contends he was addicted to chatting, not sexual content.

The ADA protects only those drug addicts who are in the process of, or have successfully completed, a rehabilitation program. The law also protects current users of alcohol, but only if they do not otherwise violate any work rules. For example, an

*Continued on Page 2*



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### Ask the Lawyers

- Muslim employee refuses to take orders from female boss – can we fire him?
- Can we fire employee surfing porn on the net?
- Can we post a list of fired employees?
- Can we verify employment without employee consent?
- Can we require employees to give reason for PTO?
- Do we have to pay employee fired for stealing?
- Do employees have to disclose their illnesses to co-workers?
- Must home office employees “give” company the time they would have been commuting?
- Do we have to pay contractors overtime?

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## Big Money\*



*\$14.5 million paid by Hewlett-Packard for an investigation of boardroom leaks to the media that included accessing private phone records of board members and reporters.*

*\$13.6 million to be paid by E-Loan for unpaid overtime and meal breaks for mortgage loan consultants improperly classified as exempt.*

*\$5 million settlement to be paid by Woodward Governor for paying its minority employees at a lower rate than their white counterparts.*

*\$2.2 million paid by JPMorgan Chase & Co. (Chase) to settle a claim brought under the Americans with Disabilities Act (ADA) for failing to accommodate employees who were medically released to return to work after leaves of absence exceeding six months.*

*\$3.3 million awarded on appeal to female applicants rejected because they did not pass a pre-employment "strength test" at Dial Corporation's Armour Star sausage-making plant.*

*\$ 2.8 million paid by Quietflex for class action discrimination against Hispanics, who were segregated into lower-paying, less desirable jobs, denied transfers to better jobs, and required to speak and read English for promotions.*

*\$1.5 million paid by the Lodge at Torrey Pines for having a hostile work environment for homosexual employees.*

*\$1.5 million paid to three ex-police officers in retaliation for speaking out against corruption in the department.*

*\$1+ million spent by Goodyear to settle class action discrimination against female applicants for entry-level positions.*

*\*FAIR MEASURES REPORTS ONLY SETTLEMENTS AND CASES UPHELD ON APPEAL – NEVER JURY VERDICTS.*

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*"Internet Addiction" from page 1*

employer cannot discriminate against an employee who drinks every night and weekend, but could fire him if he came to work drunk or otherwise impaired. This man's "addiction" does not meet either of those standards – he is not in rehabilitation, and he is violating company work rules.

The ADA protects a person with a physical or mental impairment that substantially limits one or more of the major life activities, such as seeing, walking, or eating. At this point, there is no evidence that he was so impaired. Even if he was, he must then show he was a qualified individual, meaning he could do the job as required by IBM. One of the company's requirements is that employees follow company rules, so it would not seem he is a qualified individual.

Although the man has a lawyer, it should be noted that he is also a lawyer himself, so that may explain why such a weak case ever got filed in the first place.

**WHAT YOU SHOULD DO:** Apply work rules consistently to everyone, and no one can claim discrimination for any reason.

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## Manager Who Failed to Interview Black Applicants Guilty of Discrimination

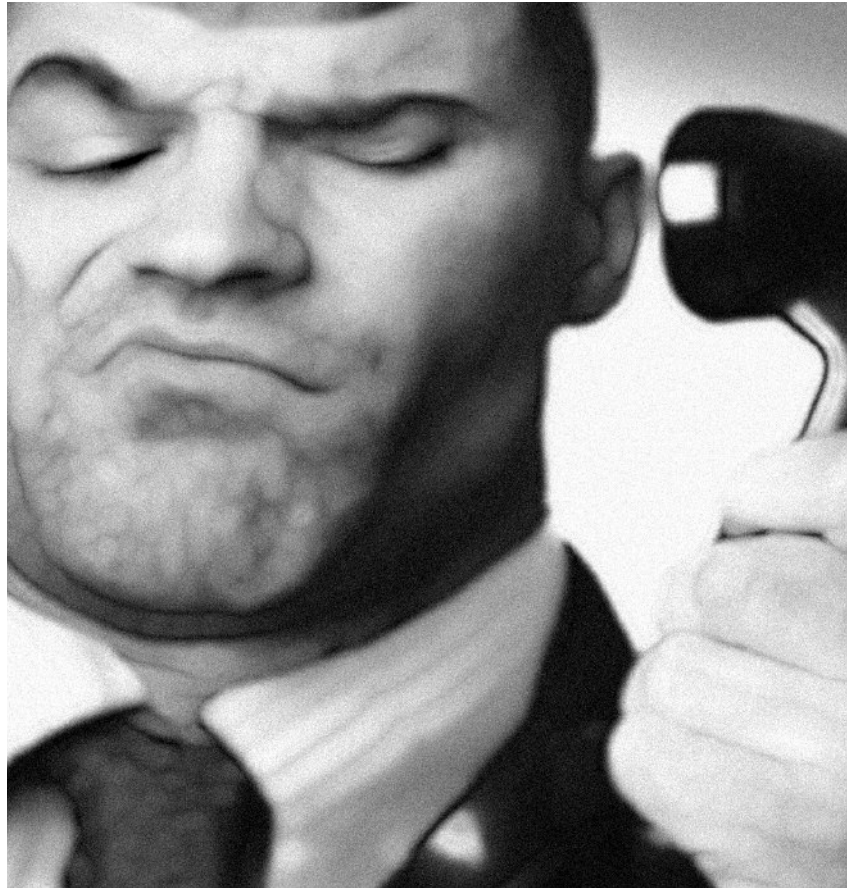
**W**hat happens when an over-worked, under-staffed manager fails to interview qualified black applicants for management positions? He could lose a case for race discrimination.

The case involved four black applicants. Two of them passed the pre-screening. The manager set up telephone interviews with them. He failed to call them at the time of the interview. The applicants called back to follow up. The manager never returned their phone calls. He did return the call of at least one white applicant who he also failed to call at the scheduled time.

A third black applicant was told to call for an interview, but each time she spoke to the manager he said he was too busy to schedule an appointment. She finally submitted a false resume with a “white name and address” and with fewer credentials. The manager called to set up an interview for the “white” applicant. After making that appointment, the black applicant immediately called to set up an interview, and the manager again said he was too busy.

Finally, a fourth black applicant was interviewed, but denied employment because he did not “pass” the interview. When asked why, the manager could not give a specific reason.

The 7th Circuit Court of Appeals held that Target Stores had



failed to prove it had a legitimate, non-discriminatory reason for its decisions, and allowed the case to go to trial. *EEOC v. Target Stores*.

**WHAT THIS MEANS TO YOU:** Although it may be difficult in the crush of work to do a good job interviewing applicants, it is an essential function of every manager’s job.

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