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Accommodating Employees with Disabilities Due to Mental Illness

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Statistics from the National Alliance on Mental Illness indicate that one-quarter of all American adults will experience some type of mental health issue this year. In light of this, it is not surprising that employers are increasingly being asked to accommodate employees with mental illnesses and that more cases are being brought under the Americans with Disabilities Act (ADA) involving mental health issues. This article briefly reviews the current state of the law and offers some suggestions to employers on compliance.

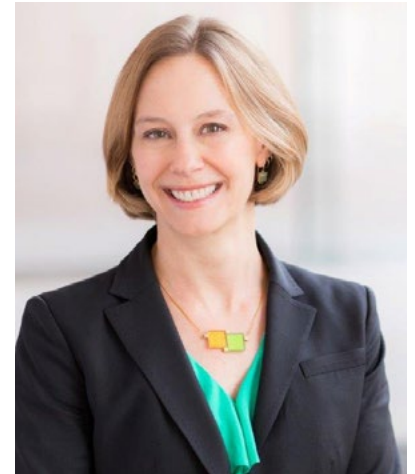
Mental Illness Covered by the ADA

Mental disabilities are covered by the ADA to the same extent as physical disabilities. A physical or mental impairment will constitute a disability under the ADA if it "substantially impairs one or more major life activities," which are broadly defined to include activities such as learning, reading, concentrating, thinking and communicating. According to the Equal Employment Opportunity Commission (EEOC), a broad range of mental illnesses may qualify as disabilities, including major depression, bipolar disorder, anxiety disorders, schizophrenia, and personality disorders. Because many mental health conditions are episodic in nature, it is important to understand that an impairment that is episodic or sporadic is considered a disability if it substantially limits a major life activity when active.

Employer Obligations to Employees with Known Mental Health Disabilities

Employers are obligated to provide a "reasonable accommodation" to an employee with a known disability if the accommodation would not impose an undue hardship on the employer. There are several components to this obligation, each of which can have its own pitfalls.

First is the requirement that a disability be "known." Unlike physical disabilities, which may be obvious, it can be very difficult for an employer to recognize the existence of a mental disability. It also can be difficult for an employer to know that performance problems may be linked to a mental disability. Moreover, although the initial burden



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is on the employee to make known the disability and request an accommodation, employers should understand that the employee does not need to use any "magic" words – such as "disability" or "accommodation." It is enough to put the employer on notice that he or she requires an adjustment to the workplace because of a physical or mental limitation. What constitutes sufficient notice is still unclear and subject to interpretation by the courts. As an example, the EEOC has published guidance stating that an employee who tells his employer that he needs time off because he is "stressed and depressed" has put his employer on notice. Courts have, however, rejected this guidance and required more specific notice of both the disability and the impact on the employee's ability to perform the job.

While an employer has the right to, and should, get medical documentation of the existence of the disability, employers should not second-guess whether the employee's medical condition qualifies as a disability under the law, as amendments to the ADA lowered the bar substantially several years ago. A prudent employer will generally assume the employee is disabled and focus on the accommodations process.

A second issue involves what constitutes a reasonable accommodation. The accommodations provided for mental impairments are often different than those for physical impairments. Mental disabilities may require changes to scheduling, attendance, or the manner in which work assignments are provided. Employee requests to work at home or to take leave are also common. These accommodations may seem incompatible with today's workplaces that are often fast paced and high stress, but employers nevertheless have the obligation to consider them and may be required to provide them unless they create an undue hardship, or some other accommodation would be equally effective.

The employer must engage in the interactive process – a dialogue with the employee about the accommodation – to determine whether the accommodation is reasonable and/or will cause undue hardship to the employer. This requires identifying essential job functions, identifying barriers to performance by learning the employee's limitations, and considering the most effective accommodations. This exchange of information and ideas is intended to result in an accommodation that allows the employee to perform his or her job without significantly disrupting the employer's operations. An employer is not required to provide the exact accommodation requested by the employee, but must provide an accommodation that is reasonably expected to allow the employee to perform his or her essential job functions. For example, an employee with ADHD may request a private office to minimize distractions from nearby co-workers. If noise-cancelling headphones could effectively reduce these distractions, the employer may refuse to provide the private office and choose instead to provide the headphones.

An accommodation needs not be provided if it would cause an undue hardship to the employer. An undue hardship includes any action that is excessively costly, disruptive, or fundamentally alters the nature and operation of the business. In many cases, it will be easier for a smaller employer to claim undue hardship than large employers, because courts will consider the overall financial resources of the employer and the number of employees. An accommodation that requires other employees to work harder or longer is generally not reasonable, and an employer is not required to reduce production standards or excuse compliance with legitimate, business-related conduct rules.

Recommended Steps for Employers

In light of the uncertainty involving requests for accommodations of mental disabilities, there are some steps that employers can take to protect themselves.

- Every employer should have a policy that informs employees of the process for requesting an accommodation, and provides a point of contact for such requests. All requests, no matter how minor, should be made via that process.
- While a formal, written process is not an absolute requirement, employers should have a regular process for addressing requests to ensure consistency and proper documentation.
- Medical information must be kept confidential and in a locked cabinet separate and apart from any personnel files.
- Employers should document the steps taken to evaluate the request and be prepared to explain the reason for any denial and the hardship that would be caused.
- If a requested accommodation is denied, employers should be prepared to offer alternatives, or invite the employee to request an alternative accommodation.
- Employers should review and revise job descriptions, which are critical for determining an employee's essential functions. Job descriptions should clearly address essential functions relating to attendance, work location, or teamwork.

With proper procedures in place that are followed whenever an issue arises of providing accommodations to employees with any type of disability, employers can mitigate potential ADA and EEOC compliance issues. This is particularly the case when it comes to employees with disabilities due to mental illness.

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