

EEOC Giving More Thought to Mental Health Conditions

Article By:

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The U.S. Equal Employment Opportunity (EEOC) this week issued a publication addressing the rights of employees and applicants with mental health conditions under the Americans with Disabilities Act (ADA). The publication, entitled “Depression, PTSD, & Other Mental Health Conditions in the Workplace: Your Legal Rights,” can be found [here](#).

The ADA does not draw a distinction between mental and physical disabilities in terms of an employer’s non-discrimination and accommodation obligations. As with a physical disability, a mental health condition need not necessarily be permanent or severe to be protected under the ADA. A condition that makes activities more difficult, uncomfortable, or time-consuming to perform compared to most people could constitute a disability. If symptoms are intermittent, the focus is how limiting the symptoms are when present. Major depression, post-traumatic stress disorder, bipolar disorder, schizophrenia, and obsessive compulsive disorder are provided as examples of some of the conditions that “should easily” qualify as a disability.

An employer need not employ someone with a mental disability who cannot perform his or her job, or who poses a significant risk of substantial harm to him or herself or others. However, the employer cannot rely on assumptions or stereotypes about a mental health condition in making that determination; there must be objective evidence. Similarly, an employer is not required to excuse poor job performance, even if caused by a mental health condition or side effects of medication.

Disclosure of Mental Health Condition

Employers can grapple with balancing an individual’s privacy regarding a mental health condition, with the employer’s need to assess the employee’s ability to safely perform in the role. The circumstances in which an employer may ask an applicant or employee to provide information about a mental disability are limited to the following scenarios:

1. If the individual requests a reasonable accommodation.
2. After making a job offer, but before employment begins, if all persons being hired for the same job category are asked the same questions.
3. If the employer is engaging in affirmative action for people with disabilities (such as an employer tracking the disability status), however, the individual may choose whether to respond or not.

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4. If objective evidence exists that an employee may be unable to do his or her job or pose a safety risk because of the mental health condition.

If the individual does not want to disclose his or her specific diagnosis, it “may be enough” to provide documentation with a general description of the condition, such as “an anxiety disorder.”

Types of Accommodation

The publication states that employees may be entitled to reasonable accommodation for any mental health condition that would, if left untreated, “substantially limit” the employee’s ability to concentrate, interact with others, communicate, eat, sleep, care for him or herself, regulate thoughts or emotions, or do any other “major life activity.” The employee does not need to stop treatment (as proof of the substantially limiting effect) in order to get an accommodation.

According to the EEOC, if a reasonable accommodation would help the employee do the job, the employer must provide one unless the accommodation involves significant difficulty or expense. If there is more than one suitable accommodation, the employer can choose which one to provide.

The following examples are offered as possible accommodations of a mental disability:

- Altered break and work schedules (such as scheduling work around therapy appointments)
- A quiet office space
- Devices that create a quiet work environment
- Changes in supervisory methods (for example, providing written instructions)
- Specific shift assignments
- Working from home
- Time off or leave

Regarding leave, the publication provides that leave may be appropriate if the employee cannot perform all the essential functions of the job to normal standards, and leave will help the employee get to a point where he or she can do so.

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