

## I Can't Come to Work Today, I Think I Have a FIFA

Article By:

Labor and Employment Practice Group Squire Patton Boggs

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It is comforting to know that the medical world is constantly developing and striving to improve diagnoses, treatments and understanding of health problems, particularly in the sphere of mental health. The world is becoming more and more aware of the reality of mental health and the significant issues it can cause both within and outside the workplace. Recognition of afflictions and understanding of how to accommodate and treat them increases rapidly through research and publicity.

A recent example of this arises courtesy of the World Health Organisation (the WHO but without either a sonic screwdriver or Roger Daltrey) and an updated draft of its International Classification of Diseases (ICD). It is a huge compendium of recognised diseases and health conditions and each update introduces new diseases and conditions for classification. The ICD is often relied upon in the Employment Tribunal to establish an "impairment" for disability discrimination purposes.

While they are generally an occasion mainly for medical nerdery, this particular update has produced some wider headlines as the draft ICD (not yet approved by the WHO) contains the first WHO recognition of something called "gaming disorder". This is characterised by:

*"a pattern of persistent or recurrent gaming behaviour ('digital gaming' or 'video-gaming'), which may be online (i.e., over the internet) or offline, manifested by:*

- 1) impaired control over gaming (e.g., onset, frequency, intensity, duration, termination, context);*
- 2) increasing priority given to gaming to the extent that gaming takes precedence over other life interests and daily activities; and*
- 3) continuation or escalation of gaming despite the occurrence of negative consequences."*

There are caveats that the severity is such that it leads to "*significant impairment in personal, family, social, educational, occupational or other important areas of functioning*" and that it would normally be evident over a period of 12 months (although this could be shorter in severe cases). This has obvious echoes in the Equality Act's disability guidance as it relates to adverse impact on memory, concentration and perception of the risk of danger.

A collective quizzical eyebrow has risen from this suggestion. Public feedback via Twitter has shown

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some strong disagreement, with two different strands of argument arising. One queries what this may mean for people who choose to spend their time gaming (are they forced to go to gaming rehab? Are they now to be portrayed as ‘needing help’?) and the other argues that recognition of gaming disorder dilutes and distracts attention and resources from conditions they see as more serious. That may be to confuse distaste or disregard for the subject matter of the addiction with the psychological impact of addiction itself. After all, it is well recognised that other sensory experiences such as gambling or porn can be the basis of clinical addictions and so there is no obvious reason, despite its essentially trivial and self-induced nature, why gaming should not fall into the same category.

There is certainly resistance in the medical profession to this proposed change. One doctor pointed out that it could lead to confusion from parents over whether their child has a disorder or simply wants to spend what they regard as an unhealthy length of time shooting zombies/aliens/friends over the internet. Further, another classification list, the Diagnostic and Statistical Manual of Mental Disorders (most recent edition published in 2013), refers to ‘internet gaming disorder’ only as a “condition for further study”, meaning it is not officially recognised.

However, if it does remain in the finalised ICD, what could this mean for employers?

Not much in an immediate sense, save that it obviously has the potential of being classed as a disability under the Equality Act 2010 and so could in principle form the basis for discrimination claims. Addiction to alcohol, nicotine or any other substance is expressly excluded from being a disability, but gaming could not be described as a substance and a legislative change would be required to exclude gaming disorder from constituting a disability if that were the Government’s intention. We think this unlikely, as there is nothing on the disability provisions of the Equality Act which rules out conditions on the grounds that they are essentially self-induced.

Assuming the draft ICD wording remains the same, the severity threshold for gaming disorder is relatively high and the EqA definition of disability would still need to be met as well. In particular, does the gaming have an adverse effect on the carrying out of normal day-to-day activities and is it substantial and long-term? There are tragic instances where gaming has resulted in severe health issues and even death but we think that once addiction is established the bigger issue may be the more marginal impacts on work performance through fatigue or loss of concentration (i.e. the focus on gaming taking up what one commentator described as a lot of “neurological real estate”). If on the basis of your consequently substandard performance you are selected for redundancy or denied a promotion, etc., could that not be argued to be less favourable treatment arising out of something connected with a disability? If so, Section 15 of the Equality Act would require the employer to be able to justify that treatment or face coming unstuck in Tribunal.

It is not necessarily going to be easy to identify the rare instances where an employee may have a gaming disorder. Much like alcohol or drug dependency, it is unlikely that someone will freely explain that they have become dependent on gaming. Therefore it is always advisable to keep an open mind where you suspect something is not quite right with an employee.

At the time of writing, selfie disorder is not on the WHO’s radar so far as we know.

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