



Tips For Accommodating Depression, PTSD, and Other Employee Mental Illnesses

Prepared by:
Mark B. Wiletsky
Holland & Hart LLP

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Tips For Accommodating Depression, PTSD, and Other Employee Mental Illnesses

By Mark Wiletsky

An estimated 16.1 million adults in the United States had at least one major depressive episode in 2015, according to the National Institute of Mental Health. This number represents 6.7% of all adults age 18 or older in the U.S. About 7 or 8 out of every 100 people will have posttraumatic stress disorder (PTSD) at some point in their lives, says the U.S. Department of Veteran Affairs, National Center for PTSD. That number goes up to about 11 to 20 out of every 100 for veterans who served in Operations Iraqi Freedom and Enduring Freedom.

As these numbers show, depression, PTSD, and other mental illnesses are relatively prevalent in our society. At some point, you will be faced with an employee who suffers from a mental condition and you need to know your obligations related to potential accommodations for such employees. The Equal Employment Opportunity Commission (EEOC) recently released information to help explain workplace rights for employees with mental health conditions under the Americans With Disabilities Act (ADA). Incorporating the EEOC's guidance, here are our top practical tips for accommodating individuals with mental impairments.

Tip #1 – Don't Get Hung Up On Disability Definition

Following the 2008 enactment of the Americans With Disabilities Amendments Act (ADAAA), it is easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the statute. In fact, the ADAAA states that the definition of disability should be interpreted in favor of broad coverage of individuals.

Mental conditions, such as depression, PTSD, bipolar disorder, schizophrenia, and obsessive compulsive disorder (OCD), need not be permanent or severe to be deemed a disability. Instead, as long as the condition substantially limits a major life activity, such as the individual's ability to concentrate,

interact with others, communicate, sleep, eat, learn, think, or regulate emotions, it will be considered a disability. Even if the employee's symptoms are sporadic or episodic, if they limit a major life activity when active, the condition will likely qualify. This means that in most cases, you should focus on whether you can accommodate the individual, rather than whether the individual meets the legal definition of having a "disability."

Tip #2 – Accommodate "Known" Mental Impairments

You have an obligation to reasonably accommodate "known" impairments for otherwise qualified individuals. Generally, this means that an applicant or employee must ask for a reasonable accommodation. But remember that the disabled individual need not use any special words to trigger your accommodation obligation. In other words, the person does not need to specifically say he or she needs a reasonable accommodation or mention the ADA. The individual instead may simply say that they need a change at work, such as needing to arrive late on certain days in order to attend therapy sessions, and your accommodation responsibility begins.

Generally, however, you are not obligated to provide an accommodation when one has not been requested or no work-related change has been mentioned. But, if you have knowledge of an employee's mental condition (perhaps from prior conversations or medical documentation) and that "known" disability impairs the employee's ability to know of, or effectively communicate a need for, an accommodation that is obvious, you should engage in a discussion with the employee about potential accommodations.

Tip #3 – Ask For Documentation

When an employee requests a reasonable accommodation due to a disabling condition, ask the employee to put the request in writing, describing the condition and how it affects his or her work. You may also request a letter from the employee's health care provider documenting the mental condition and that the employee needs a work accommodation because of it. However, even if the employee declines to provide a request for

accommodation in writing, you still have an obligation to engage in the interactive process and potentially accommodate that individual.

Be careful not to discriminate in your requests for documentation. It is best to have a uniform practice of requesting this written information for all accommodation requests, for both physical and mental disabilities, so that you cannot be charged with singling out a particular employee based on a mental illness.

Tip #4 – Keep An Open Mind About Accommodations

Don't jump to the conclusion that an accommodation will necessarily be burdensome or costly. Some reasonable accommodations for mental disabilities may be relatively benign. Examples may include allowing the employee to wear headphones to drown out excessive noise, writing down work instructions rather than verbal instructions, changing shifts or start/end times to allow for doctor or therapy appointments, or working in a private room.

Of course, if an accommodation will result in significant expense or disruption to your business, you may be able to decline it due to undue hardship. But don't assume that upon first request. Instead, engage in an interactive process with the employee, including input from his or her health care provider, to consider possible accommodations. A brainstorming session can often produce a variety of workable solutions, and you can choose the one that best suits your business, as long as it permits the employee to perform his or her job. Be sure to confirm those discussions in writing with the employee to avoid disputes down the road about what was discussed and/or agreed upon.

Tip #5 – Don't Excuse Poor Performance, But Make Adverse Decisions Carefully

If an employee with a mental impairment cannot perform all the essential functions of his or her job, even with a reasonable accommodation, the disability generally will not save his or her job. You are not required to lower

your job expectations or accept poor work performance just because someone is disabled.

But, before you discipline, demote, or terminate a disabled employee, be sure you have explored any other rights to which the employee may be entitled. For example, consider whether a reasonable accommodation would include a defined leave of absence to allow the employee to get treatment, or whether the employee qualifies for leave under the Family and Medical Leave Act (FMLA). Make certain that the unfulfilled or poorly executed duties involve essential job functions, because if they are only marginal job duties, you may need to eliminate the marginal duties as a reasonable accommodation. Once you have examined any other possible obligations and accommodations, be sure that you will be treating the disabled employee similarly to non-disabled employees who have similarly performed poorly. Only after doing this thorough analysis should you take adverse action against a disabled employee. And document every step, in case you need to defend your actions.

Conclusion

The EEOC reports that in fiscal year 2016, almost 5,000 charges of discrimination were based on mental health conditions. It also states that it obtained about \$20 million in that same year for individuals with mental health conditions who were unlawfully denied employment and reasonable accommodations. Follow our practical tips about accommodating depression, PTSD, and other mental illnesses to help avoid being included in the EEOC's future statistics.

For questions regarding this update, please contact:
Mark Wiletsky
Holland & Hart, 1800 Broadway, Suite 300, Boulder, CO 80302
Email: mbwiletsky@hollandhart.com Phone: 303.473.2864

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