

MENTAL HEALTH ISSUES AND WELLBEING IN THE WORKPLACE

– IS THERE A PILL FOR THAT?

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I. Understanding the ADA and Related Guidance

A. The Americans with Disabilities Act

1. 42 U.S.C. §§ 12101-12117, 12201-12213 (1994) (codified as amended).
2. "The workforce includes many individuals with psychiatric disabilities who face employment discrimination because their disabilities are stigmatized or misunderstood. Congress intended Title I of the Americans with Disabilities Act (ADA) to combat such employment discrimination as well as the myths, fears, and stereotypes upon which it is based."¹

B. The ADA is applicable to both physical and mental disabilities

1. The ADA defines disability as a "physical or mental impairment that substantially limits one or more major life activities."
 - a. Employers have certain obligations regarding accommodating anything that the ADA defines as a disability, so where does the ADA definition draw the line?
2. EEOC Notice No. 915.002: Guidance on ADA and Psychiatric Disabilities²
 - a. Mental Impairments include "[a]ny mental or psychological disorder, such as . . . emotional or mental illness."³

¹ H.R. Rep. No. 101-485, pt. 3, at 31-32 (1990).

² <https://www.eeoc.gov/laws/guidance/enforcement-guidance-ada-and-psychiatric-disabilities>

³ 29 C.F.R. § 1630.2(h)(2) (1996).

- i. Not all mental illnesses listed in the DSM (Diagnostic and Statistical Manual of Mental Disorders, used by psychological clinicians) are disabilities or mental impairments as defined by the ADA.
 - (A) Some conditions, such as substance abuse arising out of currently engaging in illegal use of drugs, do not qualify.
- b. The employee must experience a substantial limitation relating to the mental impairment.
 - i. An employee's "substantial limitation" is evaluated in terms of the severity of the limitation and the length of time it restricts a major life activity.
 - (A) Avoid generalizations and focus on that person's individual circumstances.
 - (B) For example, where a person has a condition that may prevent them from driving, but they don't have a car, don't know how to drive, and live in New York City with full subway access, that might not be a substantial limitation.
- c. Mental impairments must impact a major life activity inside or outside of the workplace to merit an accommodation.
 - i. The level of impact can include activities inside the workplace (job duties) or activities outside the workplace (such as sleep, concentration, ability to perform other critical major functions).
 - ii. Employers cannot factor in mitigating measures when assessing the extent to which a mental health condition impacts an employee's level of impairment.
 - (A) For example, the fact that an employee usually takes medication to mitigate the impact of a mental health

condition cannot factor into the assessment of how that condition impacts their life.

- (B) That employee's level of impairment would need to be assessed based on their condition without medication as a mitigating factor, when assessing whether the employee is entitled to an accommodation.

C. Employee Disclosure

1. Employers are not required to accommodate a disability of which they have not been notified.
2. Similarly, employees are not required to disclose a disability (except in very limited circumstances).
 - a. Employers may not require an employee to disclose their disabilities – "speak now or forever hold your peace" is not an option.
3. Disclosures made to the employer are generally required to be kept confidential.
 - a. Information about disclosed mental health conditions may only be released in limited circumstances, including to first aid personnel in an emergency, to necessary personnel within the company who need to be aware to accommodate the employee, or to investigating government officials.

D. Making Accommodations

1. Requests for Accommodations
 - a. Requests for accommodation do not need to be in writing.
 - b. The employee's family member, medical professional, or other representative may make the request for a reasonable accommodation.

- c. An employer may request documentation regarding an employee's disclosed condition for the purpose of ensuring that their condition is in fact a disability as defined by the ADA.

2. Types of Accommodations

- a. Accommodations can include any of the same accommodations applicable to employees with physical disabilities, including modified working hours or changes to the workplace.
- b. When might these changes be appropriate for an employee with an ADA-covered mental health disability?
 - i. Modified working hours may be an appropriate solution for an employee who takes psychiatric medications which can lead to difficulty sleeping.
 - ii. A change in location of an employee's desk may be appropriate for an individual who experiences post-traumatic stress disorder around loud noises, so that they're farther away from a noise source.

3. Equity vs. Equality in Accommodations

- a. The ADA mandates equity in employee treatment, not equality.
 - i. Equitable policies get people to the same result, while equal policies treat everyone the same.
 - ii. Mental health challenges vary just as widely as physical disabilities, and accommodations aren't cookie-cutter.
 - (A) An employee who struggles with depression might need a flexible work schedule, while an employee with obsessive compulsive disorder may need a more consistent structure and routine.
 - (B) But both accommodations get them to the same result: improved job performance, and more successful employees.

II. COMMUNICATING WITH EMPLOYEES ABOUT MENTAL HEALTH

A. Recognizing the Stigma

1. What comes to mind when we think about mental illness?
 - a. The majority of Americans have stigmatizing attitudes towards mental illness.⁴
 - b. Studies suggest that people generally have more negative attitudes relating to mental illness than to physical disability, and many equate mental illness with other unrelated behaviors and traits, such as criminality and drug abuse.⁵
2. A significant number of adults experience mental health challenges, including some of those who have these negative views of mental illness.
 - a. Overall, about 44 million adults (over age 18) in the U.S. report having had any mental health condition during the past year, representing about 18.5% of the U.S. population.⁶
 - b. According to the Centers for Disease Control and Prevention, about 80% of adults with depression reported at least some difficulty with work, home, or social activities because of their depression symptoms.

⁴ Understanding labeling effects in the area of mental disorders: an assessment of the effects of expectations of rejection. Am Sociol Rev. 1987;52:96–112.

⁵ Corrigan PW. River LP. Lundin RK, et al. Stigmatizing attributions about mental illness. J Commun Psychol. 2000;28:91–103; Corrigan PW. River LP. Lundin RK, et al. Stigmatizing attributions about mental illness. J Commun Psychol. 2000;28:91–103.

⁶ <https://adata.org/factsheet/health>

- c. About 18% of workers in the U.S. report having a mental health condition in any given month.
 - i. Mental health disabilities are one of the most common types of disability covered under the ADA.
 - 3. Employees are often hesitant to disclose their mental health challenges to employers.
 - a. Only 44% of Millennials and 38% of Gen Zers who took time off work because of stress or anxiety issues admitted the reason for their absence to employers.⁷
- B. Lifting the Stigma
 - 1. Create opportunities for employees to disclose mental health conditions when they choose to:
 - a. Inform employees about who they can approach and how to start the conversation.
 - b. Open multiple channels of communication.
 - i. An employee who is impacted by social anxiety might struggle with disclosing at all when they're only told they can request accommodations by talking to a supervisor, but may reach out if the option to email is provided.
 - 2. Recognize mental health awareness events
 - a. *October 10th*: World Mental Health Day
 - b. *May*: Anxiety and Depression Awareness
 - c. *First Wednesday in November*: National Stress Awareness Day
 - d. *March 1st – March 7th*: Eating Disorder Awareness Week

⁷ <https://www.forbes.com/sites/deloitte/2020/08/04/the-importance-of-mental-health-support-in-the-workplace/?sh=50a0325c3188>

C. Benefits of Successful Communication

1. When employees are able to address their mental wellbeing, they reduce barriers to productivity.
 - a. An underperforming employee may have been limited by a mental health condition, not by their abilities.
 - b. Employees who feel confident that they won't be viewed negatively based on their condition are more likely to communicate about absences or changes in their condition, allowing employers to plan and prepare.
 - i. Millennials surveyed by DeLoitte this year said that they were three times as likely to disclose that they took time off work to handle issues relating to stress or anxiety where their workplace provided "strong mental health support."⁷
2. A supportive workplace is in the best position to recruit and retain talented people.
 - a. Potential new hires, especially those who have struggled with mental illness, who see a company culture of acceptance and openness are more likely to choose your company.
 - b. Expressing a focus on mental wellbeing and acceptance of mental health conditions throughout the hiring and training process draws in candidates who share your organization's values.
 - c. Current employees who feel they can be honest about their mental health are more likely to be satisfied in their work.

III. FOSTERING A MENTALLY HEALTHY MODERN WORKPLACE

A. Organization-Wide Action

1. Choose policies that acknowledge mental health conditions.
 - a. Review policy and handbook language to ensure that you aren't excluding mental health concerns.

- i. For example, policies addressing absence from work due to medical visits can also address appointments with therapists.
 - 2. Assess what resources your organization provides to employees
 - a. What mental health services are covered through company-provided insurance?
 - b. Does your organization offer an Employee Assistance Plan?
 - 3. Incorporate mental health topics into employee training.
 - a. Include topics like employee burnout and stress management in standard trainings for new employees.
 - b. Clarify lines of communication from the beginning.
 - i. New hires should know who they should approach to request an accommodation based on mental health concerns, or just to discuss how they're doing.
- B. Individual-Focused Action
- 1. Prepare supervisors and managers to have sensitive conversations about mental health.
 - a. Ensure that they know boundaries of when it is and isn't appropriate to address with an employee.
 - b. Encourage open ended questions so that employees have opportunities to disclose without pressure.
 - 2. Make access to mental health resources easy and stigma-free.
 - a. Provide information that can be accessed without employees needing to "out" themselves as seeking mental health treatment.
 - i. For example, make information about use of an EAP available on a company intranet, instead of accessible by contacting a certain person within the company.
 - 3. Give employees the space to share their own experiences if they choose.

- a. Hearing from others, especially those in management, about experiences with mental illness can help destigmatize the discussion.
 - b. Knowing that colleagues have sought treatment for their conditions can encourage employees to seek treatment and utilize resources.
- 4. Remind employees about resources you've made available.
 - a. Hold refresher trainings to keep employees up to date on the resources within your organization.