

Gavel to Gavel: Surge in claims necessitates updates

By: Lauren Oldham



It's important employers review their policies, procedures and training programs when it comes to mental health disabilities in the workplace. With one in four Americans experiencing some kind of mental impairment, no workplace is immune.

After what it described as a surge in the number of mental health disability discrimination claims, the Equal Employment Opportunity Commission late last year issued detailed guidance for employees regarding their rights and employers regarding their obligations under the Americans with Disabilities Act. The EEOC reports recovering \$20 million in 2016 from employers that denied employment or job accommodations to individuals with mental health conditions.

Such conditions include certain learning disorders, psychological disorders, intellectual disabilities, organic brain syndrome, emotional or mental illness, like major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia.

When updating policies, procedures and training, it is critical that employers include the key steps for engaging in good faith in the accommodation process with employees or job applicants suffering from a mental impairment. While employers have a duty to provide reasonable accommodations for mental disabilities, they are not required to provide accommodations that pose an undue hardship.

When determining whether a request for a reasonable accommodation has been made, it's important to note the law does not require an employee or applicant to make a formal request to trigger the interactive accommodation process. Requests can also be made on behalf of an employee or applicant by a family member, health professional, or other representative.

The accommodation process should be evaluated on an individual basis and include an individualized assessment of the disability and essential job functions. Some examples of possible accommodations include altered break and work schedules, quiet office space or devices that create a quiet work environment, changes in supervisory methods, altering shift assignments, and permission to work from home.

While employers are required to engage in the interactive process and explore possible accommodations, they are not required to alter or eliminate any of the essential job functions. Employers are also not required to create a new position for the employee.

Navigating the accommodation process and ensuring compliance with many of the ADA nuances can be difficult. It is recommended that employers engage legal counsel in reviewing and updating policies, procedures and training.

Lauren Oldham is an attorney with GableGotwals, practicing in the areas of labor and employment law, ERISA and general litigation.