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Legal Perspective: Legally Managing Mental Health Disabilities in the Workplace

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Every workplace should be prepared to handle mental health disabilities, as studies estimate 1 in 4 American adults suffer a mental health impairment.

As more employees become aware of their rights under the Americans with Disabilities Act, the Equal Employment Opportunity Commission — the agency responsible for enforcement — reports a surge in the number of charges for mental health disability discrimination. In 2016, the EEOC recovered $20 million from employers for people with mental health impairments who were denied employment or job accommodations, both violations under the ADA.

Employers must therefore be diligent in educating managers on how to comply with the ADA, what constitutes a mental impairment, and the key steps in fulfilling their obligation to engage in the interactive job accommodation process in good faith.

Mental impairments include but are not limited to psychological disorders, intellectual disabilities, organic brain syndrome, emotional and mental illness, and certain learning disorders. Covered mental disabilities almost always include major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder and schizophrenia.

Even a mental impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. Major life activities include such things as the ability to concentrate, communicate, interact with others, eat, sleep, care for one’s self and regulate thoughts or emotions.

In most situations, employees may keep their health private. The ADA makes it unlawful to ask health- related questions except in specifically allowed situations. Four common situations where health-related inquiries can be made include:

• After a conditional job offer has been made but before employment begins.

• When engaging in affirmative action for people with disabilities.

• When an employee requests a reasonable accommodation for an impairment.

• When there is objective evidence the employee may be unable to perform the essential functions of the job or may pose a direct threat to the health or safety of themselves or others due to an impairment.

Employers must grant reasonable accommodations for mental disabilities unless doing so imposes undue hardship. An employer should begin the interactive accommodation process when:

• An employee discloses a mental impairment and requests an accommodation. Keep in mind, an employee does not have to use magic words such as “disability,” “accommodation” or “interactive process” to trigger the duty to engage in the interactive process.

• An employer knows or is given a reason to know an employee is disabled and requires an accommodation (even if the employee does not request it).

• When an employer has a reasonable belief based on objective evidence that an employee’s inability to perform an essential job function is due to a mental condition.

The accommodation process often requires an evaluation of the reasonableness of a requested accommodation, and a proper evaluation should include an individualized assessment of the situation. Examples of reasonable accommodations include altered break and work schedules (e.g., scheduling work around therapy or other appointments), quiet office space or devices that create a quiet work environment, changes in supervisory methods (e.g., written instructions from a supervisor who usually does not provide them), 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 functions of the job that are truly essential, or to create a new position for the employee.

Given the prevalence of mental health impairments in the workplace, all employers are advised to review and update their disability accommodation and discrimination policies and to regularly train all employees regarding their policies and procedures. To minimize the risk of costly claims, these efforts are best done by engaging legal counsel to audit the employers’ prevention practices and assist with training.

http://www.tulsaworld.com/business/tulsabusiness/legal-perspective-legally-managing-mental-health-disabilities-in-the-workplace/article_53f5f767-87ac-5a72-a85a-c29b0f91c65b.html