



EEOC Explains Workplace Rights For Employees With Mental Health Conditions

Insights

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Late last year, the Equal Employment Opportunity Commission (EEOC) issued a “resource document” aimed at employees entitled “Depression, PTSD and Other Mental Health Conditions in the Workplace: Your Legal Rights.” While the document does not break new ground, it clarifies some important issues under the Americans with Disabilities Act (ADA). Employers should familiarize themselves with its contents.

Can Employees Be Fired For Their Mental Health Conditions?

The EEOC’s document begins by addressing whether an employee may be fired for having a mental health condition. The EEOC says no, but cautions that employers do not have to hire or retain people in jobs they cannot perform, or employ people who pose a “direct threat” to safety (which the agency defines as a significant risk of substantial harm to self or others).

The EEOC further maintains, however, that an employer cannot rely on “myths or stereotypes” when deciding whether an employee is able to perform the job or poses a direct threat. Rather, before removing them from a job, the agency maintains that the employer must have *objective evidence* that, even with a reasonable accommodation, the employee cannot perform the job or presents a significant safety risk.

Privacy Concerns

Next, the document addresses whether an employee may keep a mental health condition private. The EEOC states that an employee may withhold this information in most situations. In fact, the document reiterates that an employer may only ask about a mental health condition in four situations: (1) when the employee seeks a reasonable accommodation; (2) after making a job offer but before employment begins (so long the same questions are asked of everyone entering the same job category); (3) when engaging in affirmative action for people with disabilities; or (4) when there is objective evidence that an employee cannot perform the duties of the job or may pose a safety risk. The agency goes on to point out that the employer must keep information about an employee’s mental health condition confidential, even from coworkers.

Accommodation Do’s and Don’ts

The document next addresses reasonable accommodations for mental health conditions, noting the condition need not be permanent or severe to qualify for an accommodation. Rather, if the condition makes performing activities more difficult, uncomfortable, or time-consuming compared to most

other people, an accommodation may be required. The EEOC notes that conditions such as major depression, post-traumatic stress disorder, bipolar disorder, schizophrenia, and obsessive-compulsive disorder should “easily” qualify for an accommodation.

The EEOC then lists possible accommodations that might be given to employees, such as altered work or break schedules, quiet office space or devices that create a quiet work environment, changes in supervisory methods such as putting work instructions in writing, changes in shift assignments, and permission to work from home. Employers are permitted to ask for documentation from a healthcare provider about the employee’s mental health condition and need for an accommodation.

The EEOC maintains that an accommodation must be provided if it will help an employee perform the job unless it involves “significant difficulty or expense.” The agency also points out that an employee cannot be charged the cost of an accommodation.

The EEOC is careful to point out that employers do not have to excuse poor job performance caused by a mental health condition or the side effects of medication. While the U.S. Courts of Appeal for the 9th and 10th Circuits take a different view (generally holding that employers may have to accommodate poor work performance or misconduct caused by a disability), the EEOC is sticking to its historically held view.

Finally, the document addresses what happens when an employee cannot perform the job even with an accommodation. The EEOC maintains that employers may have to provide unpaid leave if it could enable the employee to once again perform the job at some point in the future. Nowhere does the agency say that indefinite leave must be provided, or that leave must be provided where the employee is likely never to return to work in any event. The EEOC does say, however, that reassignment to an available vacant position may be required where an employee is permanently unable to perform their old job.

Conclusion

The EEOC’s document provides a balanced and practical summary of the rights and obligations of both employers and employees when an employee has a mental health condition. While written for employees, it provides a useful review of this often-confusing area of the law that is valuable for employers as well.

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