

Insights, News & Events

GGONNA HAVE TO FACE IT WE'RE ADDICTED TO...EVERYTHING?! DIGITAL ADDICTIONS IN THE WORKPLACE

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Cell phones. Video games. YouTube. TV. iPads. Kindles. Online Gaming. Netflix. Hulu. Amazon Prime. Stream, click, stream, repeat.

As the years go on, so too does the list of things to which people become addicted. Emerging front and center as a relatively new but common modern addiction—to which employers are having difficulty responding—is the concept of a digital addiction. A digital addiction, also referred to as a gaming addiction, internet addiction, smartphone addiction, and/or social media addiction, is more than a mindless but incessant checking of one's cell phone, more than browsing Facebook while taking a break from company-focused work. It is a complete disruption to and dysregulation of the daily life of an individual, due to compulsions to engage in the addictive and cyclical behaviors.

DIGITAL ADDICTIONS

Like other, better understood addictions, a digital addiction essentially renders an "addict" unable to perform a major life activity, such as sleeping, eating, or, better yet, working. Although the behaviors themselves (use of electronic devices) may seem more

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benign than drugs, alcohol, or sex, the personal impact is no less severe.

And perhaps even more concerning is the fact that digital addictions can be hard to spot and even harder to stop: we live in a day and age that virtually necessitates constant and unwavering digital and electronic connection. Behaviors that may be dangerous for a minority of the population with a digital addiction are entirely socially acceptable for the majority of individuals, rendering the line between an addiction and a habit blurrier than ever.

Organizations worldwide have begun conducting investigations and research into the impact of a digital addiction upon both the quality and productivity of life. Despite the fact that these studies are in the early phases, the results ought to be taken seriously, as they mirror those of better understood addictions.

By way of example: [a high school student reported](#) being unable to live without his cell phone and used it so frequently that he became hospitalized due to lack of exercise and movement. While in the hospital, he was told he had the lungs of someone nearly four times his age—the direct result of an addiction to his phone at the expense of other, healthier coping mechanisms. [Multiple recent deaths in South Korea](#) have been directly blamed on an incessant addiction to gaming, as the victims lost track of the real world and their personal needs. And, for the first time in 28 years, the World Health Organization has gone so far as to [revise its International Classification of Diseases](#). What made the cut? “Gaming disorder,” a sub-type of a disorder arising from behavioral addictions.

TREATMENT FOR DIGITAL ADDICTIONS

As the prevalence and understanding of digital and gaming addictions rises, so too does an understanding of the disorder and its treatment. Rehabilitation facilities are developing specialized tracks focusing on gaming addictions. One such center is The Edge,

located in Thailand, touting its programs designed to break digital addictions, treat the root causes leading to the addictive behaviors, and reprogram and repair relations to the digital world and its technology. A Place of Hope in Washington State boasts another similar program, as do countless centers from California to Florida. Although this addiction is not yet recognized in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), treatment programs are seeing the growing need for programs specifically tailored to digital and gaming addictions.

As with other addictions, a digital or gaming addiction often arises out of feelings of discontent, stress, pressure, anxiety, depression, or other underlying mental health conditions. The co-occurrence of one or more disorder is often present, making the addiction more difficult to treat. Similarly, and as with other addictions, the behaviors (here, gaming or compulsive use of the internet) are but a symptom of a deeper cause; typically, the behavior itself serves to either avoid, ignore, or “numb out” from more complicated inter and intrapersonal issues. In other words, the presentation itself may not be the cause, but the presentation may be the first behavior to “fix.”

WHAT DOES THIS MEAN FOR EMPLOYERS?

What does this mean for you as an employer? The Mental Health Parity and Addiction Act of 2008 requires health insurers and group health plans to provide parity between its coverage of mental health treatment and medical or surgical care, a dramatic shift that allowed hundreds of thousands of individuals to seek the mental health treatment they so desperately needed. It increased the prevalence of treatment facilities and rehabilitation programs focusing on a variety of mental health issues, as they are now able to receive funding through insurance companies when treatment otherwise would not be covered.

Although a digital addiction may not officially be recognized in the DSM-5, that does not make it any less

severe or serious. Furthermore, because individuals often have co-occurring disorders or conditions, it is likely that an individual with a digital addiction may also be suffering from at least one other mental health condition. This, in turn, increases the chance that they would be accepted into a treatment program funded by their health insurance.

In recent years, employers have come to understand their obligations related to mental health issues and disabilities; employees are to be granted reasonable accommodations for mental health disorders the same as they would be for a physical disorder or illness. This includes, when applicable, leave to attend treatment on an inpatient, partial hospitalization, intensive outpatient, or outpatient basis under federal laws like the Family Medical Leave Act or Americans with Disabilities Act, as well as state laws, like the California Family Rights Act and California's Fair Employment and Housing Act. What, then, is an employer's obligation if an employee exhibits a digital addiction?

It is prudent to accommodate an individual with a digital addiction the same way you would accommodate any other individual: engaging in the interactive process, and reviewing and discussing any restrictions, limitations, or accommodations that may be needed. While there may be concerns regarding an employee's ability to return to work in the digital age after receiving treatment for a directly related addiction, this concern cannot be used as a basis to engage in an adverse action against an employee.

This remains the case *even if* the disorder is not officially "diagnosable." In other words, an employer must take a digital addiction seriously, even if it does not understand the addiction or personally believe the addiction is legitimate.

WHERE DO WE GO FROM HERE?

For now, there are several best practices employers can use concerning digital addictions. **An up-to-date**

compliant handbook with policies addressing leaves and accommodations goes a long way. A handbook creates the foundation for your policies and procedures. If your handbook is wrong, or if you (gasp) do not have a handbook at all, your internal policies and procedures are much more likely to be problematic and subject to tougher scrutiny.

Your handbook also needs to be acknowledged by your employees. You can use an employee's acknowledgement to show they were well aware you were more than willing to reasonably accommodate them and welcomed any and all accommodation requests.

Document, document, document. We cannot say it enough: document notice of an employee's alleged disability; meetings and communications discussing the alleged disability; and requested, offered, or denied accommodations. This helps paint a picture that you took the alleged disability seriously and tried to reasonably accommodate. Without documentation of this interactive process, it may as well have never happened.

Train your managers and supervisors. They can make or break your defense. They typically receive notice of an alleged disability or requested accommodation first. If they fail to take this seriously and begin the interactive process, your defense can be severely undermined. They need to know what constitutes "notice," that the company has interactive process obligations, and how to handle accommodation requests.

Not so fast...do not be too quick in denying accommodations (even if you want to). The law requires that you participate in a "good faith" interactive process, which means considering each and every possible reasonable accommodation in "good faith." Document any legitimate reasons why an accommodation may not be "reasonable," but understand that not everything is "unreasonable." While employers do not have to provide

accommodations that are unduly burdensome, “undue burden” is an extremely tough standard to meet and is looked at primarily in financial terms by courts. So, unless a particular accommodation costs you some serious money, results in a loss of serious money through disruption to your operations, or is a direct threat to the health and safety of others, you are probably going to have to provide it.

Watch the timing of adverse actions. Retaliation claims are on the rise and are currently the number one charge filed with the Equal Employment Opportunity Commission. Retaliation largely focuses on timing – how long after an employee engaged in “protected activity” (like requesting a reasonable accommodation) did they suffer an “adverse action” (like termination). The closer in time, the more retaliation seems plausible. To combat this, make sure you properly manage bad employees, have the documentation to support your story, and terminate as soon as termination is legitimately warranted.

Finally, **stay up-to-date on changes in the law concerning digital addictions.** A critical part of avoiding future claims is being aware of your ever-changing legal obligations. One way you can stay up-to-date is by subscribing to [Fisher Phillips’ legal alert system](#).

CONCLUSION

The times continue to change, and so too does our understanding of modern addictions. Video conferencing and cloud hosting have begun to replace in-person meetings and file rooms. iPads and tablets have begun to replace notebooks and pads of paper. Cell phones have rendered landlines all but obsolete.

Although new technology may be initially feared, with time comes understanding. This age-old maxim holds true with respect to digital and gaming addictions, as well: although it may not be well known as of present, awareness begets recognition, and recognition begins

understanding. Patience, an open mind, and a good labor and employment attorney will take care of the rest.

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