



Will the DSM-5 Lead to Crazy Employment Law?

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The American Psychiatric Association released a new edition of its *Diagnostic and Statistical Manual of Mental Disorders*, known as “DSM-5,” on May 18. Although the manual is primarily used by psychiatrists and other mental health professionals in diagnosing patients, its influence extends to the courts and the development of employment law as well. DSM-5 will surely affect employment law profoundly, but it may well do so in some disparate and unpredictable ways.

DSM-5 is likely to expand the number of conditions covered by the Americans with Disabilities Act (ADA). Although DSM-5 cautions that the assignment of a diagnosis does not imply a specific level of impairment or disability, this distinction has little practical meaning given the enactment of the ADA Amendments Act in 2008, in which Congress decreed that the definition of “disability” for purposes of the ADA is to be construed broadly in favor of coverage. The Equal Employment Opportunity Commission’s regulations issued under that law even decreed that certain psychiatric disorders, including posttraumatic stress disorder (PTSD), major depressive disorder, and bipolar disorder, will almost always qualify as disabilities.

Here are four things corporate counsel should do in light of DSM-5:

1. Ensure that employees who handle accommodation requests are well trained on the definition of disability and what must be done to accommodate disabled employees and applicants.
2. Carefully document the employee’s work restrictions and the interactive process undertaken to determine how those restrictions might be accommodated. Focus on the restrictions, not the diagnosis, and remember that accommodations are required only if they will enable the employee to perform the job, not merely to make the workplace more agreeable.
3. Where accommodations are sought based on diagnoses or work restrictions that are uncertain or dubious, exercise the employer’s right to obtain a second opinion from a physician of the company’s choosing.
4. Use the DSM-5’s changes in the definition of PTSD proactively to refute invalid PTSD diagnoses in litigation and in the ADA accommodation process.

Many individual cases will have to play out before the post-DSM-5 comes into clearer focus. But if some of the changes may prove vexatious for corporate counsel, the tightening of certain diagnoses offers some silver linings among the dark clouds ahead. By understanding as fully as possible both

the pros and cons of the new manual, corporate counsel can assure that their companies aren't driven up the wall by the changes DSM-5 will bring in the employment arena.

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