Why Safety Professionals Should Know About the DSM-5

Insights
7.17.13

Kudos to my partner and fellow class of 1984 member, Jim McDonald, on being quoted today in the Wall Street Journal in *"Why Company Lawyers Are Reading A Mental-Health Manual."*

The DSM is the diagnostic manual used to diagnose mental and psychological disorders and is highly relevant in defending against disability discrimination claims under the Americans With Disabilities Act (ADA) and other similar state and federal laws. Such conditions are also relevant in investigating and defending against claims of harassment or allegations of emotional distress.

Safety professionals are often involved in determining if an injured employee is fit for duty and in developing job descriptions and means of determining if employees can perform the essential functions of the job, with or without reasonable accommodation. Let's be candid. Sometimes the safety professional and HR staff are evaluating attitude and behaviors which may be related to a mental or psychological condition, or the employee may later claim that his cursing, bad judgment, anger or offensive behavior was due to an underlying condition. Similarly, HR and Safety professionals are increasingly wrestling with "why" employees behave as they do, and how to build an effective workplace culture.

As the WSJ explains:

The fifth edition of the Diagnostic and Statistical Manual, or DSM-5, of the American Psychiatric Association has some unexpected readers: employment lawyers, who want to know how the updated manual will affect disability issues in the workplace.

....

Those new conditions help psychiatrists be more precise in identifying and treating disorders. They also open the door to more requests for accommodation under the Americans with Disabilities Act, possible grounds for discrimination lawsuits, and people leaving the workforce with Social Security disability benefits, said James McDonald, a partner with management-side employment firm Fisher Phillips.

....

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

Among the changes are new diagnoses such as Social (Pragmatic) Communication Disorder, which relates to difficulty interacting with others, and Mild Neurocognitive Disorder, which refers to memory problems. The manual also loosens some of the criteria for previous diagnoses such as Post-Traumatic Stress Disorder and Major Depressive Disorder.

Social (Pragmatic) Communication Disorder, known as SCD in the manual, covers people who are not on the autistic spectrum but have significant problems with verbal and nonverbal communication, which impairs their ability to "perform academically or occupationally," according to the DSM-5.

People previously considered quirky or shy may now qualify for this diagnosis, said Mr. McDonald. For employers, "finding the right accommodations can be a challenge."

Employers aren't required to eliminate essential functions of a job or lower quality or quantity expectations, so an employee in sales could not ask for a lower sales quota. But he or she could request a modification of his work schedule, hours, or supervision, McDonald said.

Action points?

Train supervisors and safety management to recognize situations where employees may rightly or wrongly claim to suffers from a disability condition under the ADA.

Develop and enforce real world essential requirements and job descriptions. This is yet another reason to review job descriptions with the employees who do the work and ensure their accuracy. Consider also what "attitude' and behavior may be required for the job.

Reasonable accommodation is required, but not the elimination of bona fide essential requirements.

As you manage, recognize that there may be more going on than surface behavior.

Don't make knee-jerk decisions on hire, firing or development of job descriptions.

Howard

Related People

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

Howard A. Mavity
Partner
404.240.4204
Email

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.