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Mental Health Conditions in the Workplace and the ADA

Psychiatric disabilities have a unique dynamic in the workplace because they are both very common and very misunderstood. The purpose of this brief is to inform employers, job applicants and employees about:

- Legal issues around mental health conditions in the workplace.
- Practical strategies that can be used to ensure ADA rights for people with psychiatric disabilities are realized.

“Psychiatric disability” or “mental illness”?

The words “psychiatric disability” and “mental illness” are often used interchangeably. The term mental illness is typically used in a medical context to refer to a wide range of conditions related to emotional and mental health. The term psychiatric disability is typically used in a legal or policy context to refer to impairments covered under the ADA

Myths and misperceptions

Myth: Individuals with mental health conditions do not recover

Fact: The vast majority of people with psychiatric disability do get better, thanks to improved treatments and services.

Myth: Individuals with mental health conditions cannot work in stressful or demanding jobs

Fact: Many individuals with psychiatric disability can and do work effectively. How the condition impacts work life varies considerably and there is no “one size fits all.”

Myth: Individuals with mental health conditions have weak personalities or had bad childhoods

Fact: Mental health conditions are brain disorders. They are not caused by a flawed personality or poor parenting.

Myth: Individuals with mental health conditions pose a danger to others in the workplace

Fact: Despite the flashy headlines, there is no credible evidence that individuals with mental health conditions pose a danger to others in the workplace. In fact, people with psychiatric disability are far more likely to be victims than perpetrators of violence.

Myth: Individuals with mental health conditions cannot work until they are completely recovered

Fact: Workplace accommodations enable many with psychiatric disabilities to work effectively with their disability.



About the numbers: Mental illness in the workplace

- Examples of psychiatric diagnoses include anxiety disorder, depression, attention deficit/hyperactivity disorder (ADHD), bipolar disorder and schizophrenia.
- Overall, about 44 million adults (over age 18) in the U.S. report having had any mental health condition during the past year, representing about 18.5% of the U.S. population.¹
- Among these U.S. adults, the National Institute of Mental Health estimates that:²
 - 18% have an anxiety disorder (including post-traumatic stress disorder, obsessive-compulsive disorder, panic disorder and generalized anxiety disorder)
 - 9.5% have depression
 - 4% have attention deficit/hyperactivity disorder
 - 2.6% have bipolar disorder
 - 1% have schizophrenia
- About 18% of workers in the U.S. report having a mental health condition in any given month.³ This means that psychiatric disability is one of the most common types of disability covered under the ADA.

The ADA and psychiatric disability in the workplace

- **Definitions.** The ADA defines disability as *a physical or mental impairment that substantially limits one or more major life activities.*⁴ When job applicants or employees have a mental health condition that meets this criteria, they have workplace rights under the ADA. The ADA Amendments Act of 2008 (ADAAA) recently broadened the definition of disability to provide legal protections against employment discrimination for more individuals with disabilities, including people with psychiatric disabilities.
- **Record of psychiatric disability.** The ADA also prohibits discrimination against individuals who have a record (history) of a psychiatric disability or are regarded as having a psychiatric disability. This means, for example, that qualified individuals who have a history of psychiatric disability cannot be discriminated against just because of that history. Also, employers can't take actions (such as failing to hire, demoting or denying training opportunities) because they believe a qualified applicant or employee might have a psychiatric disability.
- **Rights under the ADA.** Applicants and employees with psychiatric disabilities have two main rights under the ADA. First, they have a right to privacy. Except when asking for an accommodation, they can choose whether to tell the employer about their disability. Second, they have a right to a job accommodation unless this causes undue hardship for the employer.

Disclosing a psychiatric disability: Legal protections

- **Disclosure is a choice.** According to the ADA, employers can't require applicants or employees to disclose a disability (with a few exceptions described below). So, in most cases, disclosing a psychiatric disability is a choice, not a requirement. Individuals who choose not to tell about their mental health condition are not "lying" or "hiding." They are using a legally protected choice.

¹ National Institute of Mental Health. (2014). Any Mental Illness Among U.S. Adults. Accessed at <http://www.nimh.nih.gov/health/statistics/prevalence/index.shtml>.

² Some individuals have more than one mental illness diagnosis.

³ Harvard Health Publications: Harvard Medical School (2013). Mental health problems in the workplace. Accessed at http://www.health.harvard.edu/newsletter_article/mental-health-problems-in-the-workplace.

⁴ ADA 42 U.S. Code § 12102 - Definition of disability.



- **After the job offer.** Once a job has been offered, applicants may be asked to take a medical exam before starting work. If this exam reveals a psychiatric disability, the job offer can only be withdrawn if there is evidence that the disability can't be reasonably accommodated or poses a real safety issue.
- **On the job.** Employees generally can't be required to tell about a psychiatric disability unless requesting a job accommodation. Then, the employer can ask for some medical documentation about the disability. This medical information can't be shared with others in the workplace.
- **Federal contractors.** Employers who are federal contractors must invite applicants and employees to voluntarily self-disclose a disability. This information is only used to track the progress in meeting disability employment goals of the employer. It must be kept confidential and can't be shared with the manager or co-workers.

Practical Points: Job accommodations

- **Definitions.** Accommodations are *any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.*⁵ Employers must provide reasonable accommodations to applicants and workers with psychiatric disabilities (and other disabilities) unless this causes undue hardship. In most cases, individuals with diagnosed mental health conditions are covered under the ADA and have a right to job accommodations. For more information about the basics of ADA accommodations, go to <http://www.eeoc.gov/policy/docs/psych.html>.
- **Finding an accommodation.** Ultimately, the employer decides which accommodation will be used. But employees' should have a voice in this decision. Workers with psychiatric disabilities should think through what kind of accommodation they might need by asking themselves a few questions: *How does my disability impact the main tasks of my job? What do I most need as far as support, equipment or changes in order to do these main tasks?* Examples of accommodations for workers with psychiatric disabilities are:
 - Concentration or distraction issues: More frequent reminders of tasks and due dates; a quieter work environment; more frequent short breaks; work from home (if this doesn't cause undue hardship to the employer).
 - Managing treatment and medication: Flexible schedule to allow for appointments; more frequent breaks for medication; allow for use of water bottle during worktimes; part-time schedule until medication plan stabilizes.
 - Anxiety: Use of white noise ear phones; attend meetings remotely; work from home part-or full-time; exchange non-essential job tasks with another employee; change in management style of supervisor.
- **About work-leave.** A leave of absence is sometimes needed as an accommodation. But work-leave should be the accommodation of last resort. Whenever possible, workers with psychiatric disabilities should stay engaged in their jobs as much as possible.
- **Code of conduct.** Employers aren't required to change a code of ethics or conduct in order to accommodate a worker with a psychiatric disability. But this code must be fairly and uniformly applied and cannot be applied differently to workers with psychiatric disabilities than to other workers.
- **Supervision.** Sometimes, workers with psychiatric disabilities ask to be given a different supervisor as an accommodation. Generally, employers are not required to change the supervisor in order to accommodate a worker with a psychiatric (or any other) disability. But employers can be required to change a supervisor's leadership practices as an accommodation. For example, a worker who has concentration issues might need a more structured supervisory style that involves more task reminders.

⁵ U.S. Equal Employment Opportunity Commission. (2015). Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the ADA. Accessed at <http://www.eeoc.gov/policy/docs/accommodation.html>.



Practical Points: Job seekers

- **Staying silent is not a lie.** Remember: You are not lying if you choose not to come forward about your psychiatric disability when applying for a job. Each person must make a disclosure decision that's right for the situation and right for them. Think through your disclosure decision before applying for a job. Keep in mind that you can make a different disclosure decision for each job application. You might decide to come forward with one employer, but not another.
- **Make a decision that's right for you.** Most applicants with psychiatric disabilities choose not to tell the employer because they fear discrimination.⁶ Others, however, do tell the employer because they want to avoid surprises or want to gauge whether they will be accepted as a person with a disability in this workplace. Finally, others simply don't want to live "in the closet" as a person with a psychiatric disability. When making your disclosure decision, start with a little homework. Try to find out whether the workplace is disability-friendly. Do they include disability in their diversity statements? Is there an Employee Assistance Program? Is there an Employee Resource Group in the workplace for employees with disabilities? Are there others in the workplace who have come forward with their disabilities?
- **Disclosure and accommodation.** Even if you think you'll need a reasonable accommodation if hired, you can still decide not to disclose your disability when applying for the job. If hired, you have a right to request an accommodation whether or not you chose to tell about your disability when applying for the job. When requesting an accommodation, you will need to disclose some information about your disability. This information cannot be shared with managers or co-workers.
- **Job counselors.** If you're working with a job counselor, make it clear to her whether you want a potential employer to know about your disability.

Practical Points: Employees

- **Begin by asking yourself some questions.** Are you able to do the main (essential) tasks of your job effectively with your disability? Are you able to keep up with your treatment and medication plans when working? Do you have what you need to perform at your best in this job as a person with a psychiatric disability? If you said "yes" to these questions, you may want to consider not telling anyone in your workplace about your disability. But if you said "no" to any of these questions, you might want to think about asking for an accommodation. Ideally, ask for an accommodation before your mental health conditions impacts your job performance.
- **Start with a little homework.** Before asking for an accommodation, think through a couple of things. What specifically do you struggle with on the job because of your disability? Which task(s)? How do you struggle? What's the one thing you would most need to be able to perform better?
- **When asking for an accommodation.** This is one of the few times your employer can ask some questions about your psychiatric disability and can ask for medical documentation of your disability. This information must be kept confidential. When you request an accommodation, be specific, concrete and clear. Focus on how your disability impacts your job tasks, not on the details of your diagnosis or your symptoms.

Practical Points: Employers

- **Connect to the business.** Whether you know it or not, about one-in-five of your current employees is working with a psychiatric disability. As an organization, developing your capacity to respond effectively when a mental illness arises is not just a "nice to do" and not just about legal compliance. It is a key talent management practice that clearly connects to your ability to fully leverage talent.

⁶ Barney, L. J., Griffiths, K. M., Christensen, H., & Jorm, A. F. (2009). Exploring the nature of stigmatising beliefs about depression and help-seeking: implications for reducing stigma. *BMC Public Health*, 9(61), 1–11.



Mental Health Conditions in the Workplace

- **Accommodations—will they come forward?** The decision to come forward with an accommodation request is particularly challenging for workers with psychiatric disabilities because of the many misperceptions around mental health conditions. Yet, it is important for these workers to request an accommodation before a disability impacts their job performance.
- **Clear thinking about safety issues.** Employers can always act when there is a clear safety concern. But these actions must be grounded in evidence. Vague or general fears that workers with psychiatric disabilities are going to be violent in the workplace is not supported by the evidence and would not, in itself, constitute a credible safety concern.
- **Managers as first responders.** As face-to-face leaders, managers and supervisors are very likely to be “first responders” to accommodation requests and set the tone for disability inclusiveness in the workplace. Get the message out to all managers and supervisors in your workplace.
- **Sources of sharing and support.** Having an effective Employee Assistance Program and/or Disability Employee Resource Group can go a long way toward creating a positive climate to help workers stay effective when working with psychiatric disabilities.
- **Harassment and bullying.** Because mental health conditions are so highly stigmatized and misunderstood, workers with psychiatric disabilities are more likely than others to experience workplace harassment. Send the message across the workplace that workers with psychiatric disabilities have the same right to a respectful and effective workplace as any other worker with a disability.
- **Building trust.** The most important aspects of your workplace climate might be the least tangible. Ask yourself hard questions about the climate of your workplace. What actually happens to employees with psychiatric disabilities in your workplace? What happens to them when they come forward with an accommodation request? Are they able to stay on the job? Or do they leave the job either voluntarily or involuntarily?

Resources

- U.S. Equal Employment Opportunity Commission (EEOC). *Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities*. <http://www.eeoc.gov/policy/docs/psych.html>.
- Job Accommodation Network (JAN). *Accommodation and Compliance Series: Employees with Mental Health Impairments*. <https://askjan.org/media/Psychiatric.html>
- National Alliance on Mental Illness (NAMI). *Succeeding at Work*. <https://www.nami.org/Find-Support/Living-with-a-Mental-Health-Condition/Succeeding-at-Work>
- United States Department of Labor, Office of Disability Employment Policy. *Maximizing Productivity: Accommodations for Employees with Psychiatric Disabilities*. <http://www.dol.gov/odep/pubs/fact/psychiatric.htm>.
- Cornell University. K. Lisa Yang and Hock E. Tan Institute on Employment and Disability. *Disability & HR: Tips for Human Resource Professionals. Employing and Accommodating Workers with Psychiatric Disabilities*. http://www.hrtips.org/article_1.cfm?b_id=19.

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