

Mental Health Issues in the Workplace

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Pro-Business = Pro-Employee

The Impact of Mental Illness in the Workplace



Workplace Impact



- 1 in 5 U.S. employees has a psychiatric disability
- It is estimated that 85% of employees' mental health conditions are undiagnosed or untreated
- 1 in 17 U.S. adults lives with a serious mental illness



Workplace Impact



- 25% of employees with mental illness feel like they are discriminated against or avoided in the workplace
- One-third of EEOC charges in 2018 alleged disability discrimination
- In 2016, the EEOC won \$20 million for individuals with disability discrimination claims



Workplace Impact



- Performance
- Productivity
- Engagement
- Communication
- Physical Ability

The cost to U.S. employers is more than \$100 billion and 217 million workdays

What Can We Do?

- Comply with the Law
- Train Supervisors
- Reduce Risk Factors
- Promote a Healthy Workplace

ADA and MHRA Compliance

Disability

ADA

- Employers with 15+ employees must not discriminate and must accommodate

MHRA

- No discrimination based on disability
- Employers with 15+ employees must accommodate

Disability Defined

- Physical or mental impairment that substantially limits or materially interferes with a major life activity (including major bodily function)
- Record of impairment
- Regarded or recognized as having impairment

Reasonable Accommodation

A deviation from business as usual that allows a qualified person with a disability to perform the **essential functions** of his or her job without **undue hardship** to the employer

Possible Accommodations

- Modified or Flexible Schedule
- Remote Work Option
- Private or Quiet Space
- White Noise or Noise-Cancelling Tech
- Allowing a Support Animal
- Change in Lighting

Possible Accommodations

- Leave of absence
- Separating jobs into discrete tasks
- Providing instructions in writing
- Uninterrupted time off from work

Reasonable Accommodations

- Unreasonable or undue hardship:
 - Stress-free workplace
 - Hiring someone else to do the job
 - Indefinite LOA
 - Different supervisor (unless not an undue hardship or supervisor is behaving unlawfully, harassing, etc.)

Reasonable Accommodations

- Unreasonable or undue hardship:
 - New supervisor for depressed employee who claimed supervisor exacerbated her depression
 - Current supervisor was the sole supervisor in the department

Interactive Process

- Consider employee's requested accommodation
- Be proactive when you recognize a need
- Good faith participation in process
- Document your actions and the employee's actions and inactions
- Work toward "yes" whenever possible

Family and Medical Leave

FMLA Coverage

- Employer has 50 or more employees in 20 or more workweeks in the current or preceding calendar year
- 12 months of employment
- 1,250 hours worked in the last 12 months
- 50 employees within 75 miles

Definition of Serious Health Condition under the FMLA

An illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider

Protected Leave

- Eligible employees entitled to:
 - Up to 12 weeks of unpaid leave
 - Continuous, intermittent or reduced schedule
 - Reinstatement to position
 - Leave without discrimination or interference
 - Undue hardship does not apply

Supervisor Training

“If I had limited assets to improve the climate of any organization, I would invest ninety-five percent of them in middle managers. These are the people who make the difference in the day-to-day lives of organizations and people. When we train middle managers, we don’t just train them about how to spot and address problem behavior—we teach them empirically sound things to do and say when an employee seeks them out to discuss a problem.”

-Witness, EEOC Select Task Force on the Study of Harassment in the Workplace

Fredrikson
& BYRON, P.A.

Supervisor training

- Empower supervisors to recognize signs of distress and offer assistance
- Train supervisors to recognize behavior, and offer resources and benefits, not to diagnose illness



Signs of Distress



- Displays of anger or blaming others
- Lack of concern for safety
- Frequent absenteeism and tardiness
- Frequent statements about being tired
- Decreased productivity
- Change in attitude



Signs of Distress



- Difficulty concentrating, making decisions, or remembering things
- Unexplained aches and pains
- Reduced ability to work with others
- Withdrawing from social events
- Signs of alcohol or drug abuse



What Supervisors Can Do

- Show concern
 - *You seem tired/stressed. I am worried about you.*
 - *We missed you at Joe's retirement party—everything okay?*
- Ask if they can help
 - *Can I help? Do you need anything?*



What Supervisors Can Do

- Talk about resources
 - *If you or anyone ever needs it, we have...*
 - *I know several employees have used our EAP when they have gone through divorce, depression, etc.*
- Develop and Maintain a Reputation for Confidentiality and Discretion



What Supervisors Can Do

- Address performance/conduct issues as needed as you would with any employee
 - Focus on performance or conduct issue (not disability)
 - Provide examples and impact
 - State expectations and consequences
 - Offer support for compliance

Barriers

- Fear of invading privacy or getting personal
- A perception that it is not professional or appropriate for the workplace
- Lack of information and training

Barriers

- Unwilling to admit need for help
- Fear of adverse action and judgment
- Stigma about mental illness
- Lack of Trust

Reduce Risk Factors

Risk Factors

- Inadequate health and safety policies
- Poor communication and management practices
- Limited participation in decision-making or low control over one's area of work

One of the best ways to create a culture that supports mental health is to ensure people experience their jobs in a meaningful and purposeful way. This can be achieved by giving people autonomy and resources. If your team experiences support and independence, and that you trust them to do what they ought to do, they will generally be happier at work, which will reduce the risk of mental health problems.

-Tomas Chamorro Premuzic, ManpowerGroup

Risk Factors

- Low levels of support for employees
- Inflexible working hours
- Unclear tasks or organizational objectives
- Failure to document performance or conduct issues if termination may occur

It's also important that managers do not check out from their employees. People need guidance and direction from a leader so the worst thing you can do is disappear or be unapproachable; in fact, the worst and most stressful leaders are absent — leaving their employees without direction or feedback, and showing little concern and consideration for their staff. This harms morale and well-being.

-Tomas Chamorro Premuzic, ManpowerGroup



Strategies to Reduce Risk



- Foster an emotionally safe environment
- Create awareness of the programs provided for employees
- Encourage employees to reach out for help, connect with and support one another



Strategies to Reduce Risk



- If applicable, be clear about performance/conduct expectations and offer support for compliance
- If need to terminate/take other adverse action against employee with a disability, ensure good documentation of the legitimate, non-discriminatory reason for such action

Cases

Bowden v. Clough

- Frequent and sporadic absences for mental illness
- Employer asked for some notice/routine
- No failure to accommodate
- No evidence that employee could not provide advance notice of absences

Posteraro v. RBS Citizens

- Employee with PTSD requested a “peaceful calm environment”
- Court determined there was no request for accommodation because “peaceful calm environment” was too vague

Jenkins v. MedLabs

- Jenkins left work without notice to complain about mistreatment by other employees
- Employer assigned all involved employees to EAP counseling
- Jenkins refused EAP counseling and was discharged
- Jenkins alleged discrimination based on perceived disability

Jenkins v. MedLabs

- Summary Judgment for Employer
 - EAP was for “dispute resolution”
 - EAP was also required for coworkers
 - EAP is not adverse action
 - EAP refusal was legitimate and nondiscriminatory reason for discharge

Questions?

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