



THE OKLAHOMAN

Q&A with Lauren Oldham: Mental health workplace claims rising

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Mental health workplace claims rise

Q: Why has there been a surge in mental health disability discrimination claims?

A: One in four American adults will suffer from a mental health impairment, and the Equal Employment Opportunity Commission (EEOC) reports a surge in the number of mental health disability discrimination claims being made as more employees become aware of their rights under the Americans with Disabilities Act (ADA). The EEOC recovered approximately \$20 million from employers last year for people with mental health impairments who alleged they were denied employment or job accommodations.

Q: What constitutes mental impairment?

A: Mental impairments include but are not limited to psychological disorders, intellectual disabilities, organic brain syndrome, emotional or mental illness, and certain learning disorders. Covered mental disabilities almost always include major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder and schizophrenia.

Q: What should employers do to ensure compliance?

A: Employers should be diligent in educating managers on how to comply with the ADA, what constitutes mental impairments, and the key steps they must take to fulfill the legal duty to engage in the interactive job accommodation process in good faith. It is recommended this be done in concert with legal counsel who can audit policies and procedures and assist with training.

Q: What are key aspects of the job accommodation process?

A: Employers must grant reasonable accommodations for mental disabilities unless doing so would impose an undue hardship. The process often requires an evaluation of the reasonableness of a requested accommodation, and a proper evaluation should include an individualized assessment of the situation. While employers are required to engage in the interactive process and explore possible accommodations, they are not required to alter or eliminate any functions of the job that are truly essential. Employers are also not required to create a new position for the employee.

Q: What should trigger the process?

A: Employers should begin the process when one of the following occurs:

- An employee discloses a mental impairment and requests an accommodation. Keep in mind, an employee does not have to use magic words such as “disability,” “accommodation,” or “interactive process” to trigger the duty to engage in the interactive process;
- An employer knows or is given a reason to know an employee is disabled and requires an accommodation (even if the employee does not request it); or
- When an employer has a reasonable belief based on objective evidence that an employee's inability to perform an essential job function is due to a mental condition.

Q: What are examples of common accommodations?

A: Some examples of possible reasonable accommodations include altered break and work schedules (e.g., scheduling work around therapy or other appointments), quiet office space or devices that create a quiet work environment, changes in supervisory methods (e.g., written instructions from a supervisor who usually does not provide them), altering shift assignments and permission to work from home.

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