Published on *The National Law Review* https://www.natlawreview.com

Accommodating Mental Health Issues in Workplace: Stepping Out of Shadows

Article By:

Christina M. Kennedy

2016 brought about a host of changes for employers, including new political leaders, ever-changing technology, and new and more open dialogue on a variety of different issues. Aside from politics, perhaps one of the biggest issues brought to the forefront this past year concerns the topic of mental health. Once taboo, discussions of mental health issues are being publicly championed by the likes of Michelle Obama, Kate Middleton, Kristen Bell, and Lady Gaga. This new "normal" relating to mental health encourages those suffering to seek treatment without the fear of stigma.

In December, 2016, the ***EEOC*** issued a press release announcing its new publication on the Rights of Applicants and Employees with Mental Health Conditions. The press release noted that charges of discrimination relating to employee and applicant mental health conditions are on the rise, with over 5,000 charges and approximately $20 million dollars in settlements obtained in fiscal year 2016 alone.

Given the heightened media attention and agency focus on mental health, now is a good time for employers to review their legal obligations relating to mental illness in the workplace. Here are some key reminders:

1. Beware of myths and stereotypes: As with all other physical disabilities, it is important for the employer not to rely upon myths or stereotypes relating to any particular mental health condition, but instead focus on objective criteria. For example, an employer cannot summarily reject an applicant for a "stressful" position merely because the applicant disclosed that they have generalized anxiety disorder. In terms of applicants, remember that before an employer can reject an applicant for a job based on a disclosed mental health condition, it must have objective evidence that the employee cannot perform the job duties, or that he/she would create a significant safety risk, even with a reasonable accommodation.

2. Reasonable Accommodations: Under the Americans with Disabilities Act and similar state and local laws, employers must make "reasonable accommodations" for mental disabilities the same as physical ones. A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job or perform the duties of a job. Just a few examples of possible accommodations relating to mental health conditions include altered break and work schedules (e.g., scheduling work around therapy appointments), quiet office

space or devices that create a quiet work environment, and specific shift assignments. Employers are not required to give employees a “blank check” and grant every request for accommodation. Rather, the employer and employee must engage in the interactive process on both sides in order to find a solution, if possible, that works for all parties.

3. Sometimes, it’s just not meant to be: Just because an employee has mental illness does not mean that the employer is absolutely bound to this employee for eternity. An employer is not required to grant indefinite leave to a disabled employee. Likewise, an employer does not have to retain an employee that poses a direct threat to themselves or others.

Employers should be cognizant of the fact that not all accommodations are bad for business. Effective accommodations may help employees return to work more quickly after disability or medical leave, eliminate costs due to lost productivity, reduce insurance claims, and help with recruiting and retaining qualified employees. While surely not every employee that requests an accommodation for mental health issues is a future Lady Gaga or Kristen Bell, engaging in the appropriate interactive process will surely yield positive results and keep employers on the right side of the law.

National Law Review, Volumess VII, Number 3