



Managing Employees' Mental Health Issues in a Pandemic/Post-Pandemic World

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Mental Illness

- 20% of Americans suffer from mental illness
- Only 50% receive any kind of treatment
- Stigma
 - Employees are often reluctant to disclose mental challenges to employers
- Employees often don't realize it is the cause of poor performance or problematic behaviors

Mental Illness

- WHO reports \$1 trillion annually lost in global economy due to mental-health issues
- CDC reports that 200 million lost workdays - \$17 to \$44 billion
- 59% of business leaders report burnout as reason for losing employees
- Mental issues have been exacerbated as a result of COVID-19
- Mental issues can create other disorders including heart disease, diabetes, respiratory illness and other disorders that affect muscles, bones, and joints

Mental Illness in the Workplace

- Poor mental health and stress can negatively affect employee
 - Job performance and productivity.
 - Engagement with one's work.
 - Communication with coworkers.
 - Physical capability and daily functioning.

Mental Illness in the Workplace

- Mental illnesses such as depression are associated with higher rates of disability and unemployment.
- Depression interferes with a person's ability to complete physical job tasks about 20% of the time and reduces cognitive performance about 35% of the time.
- Only 57% of employees who report moderate depression and 40% of those who report severe depression receive treatment to control depression symptoms.
- Even after taking other health risks—like smoking and obesity—into account, employees at high risk of depression had the highest health care costs during the 3 years after an initial health risk assessment.

Mental Illness

- The nature of mental illness makes it
 - Difficult to diagnose
 - Easy to downplay
 - Easy to hide
- Employees often disregard/ignore symptoms
- Employees often don't alert their healthcare providers
- Even after diagnosis employees often downplay symptoms
- Employees often fear how, when, and why to raise the issue with employers

Mental Illness in the Workplace

- The fundamental challenge is striking the right balance between:
 - Maintaining employee privacy/confidentiality
 - Ensuring the safety of all employees
- At times these can be competing interests
- Negative stigma

Common Mental Health Impairments

- Bipolar disorder
- Borderline personality disorder
- Major depression
- Obsessive compulsive disorder (OCD)
- Panic disorder
- Post-traumatic stress disorder (PTSD)
- Schizophrenia
- Seasonal affective disorder (SAD)

Covid's Effects on Mental Illness

- Workplace mental health has been coined the “second pandemic”
- Lawsuits related to mental health will likely rise
 - Delta variant rates increasing
 - Employees returning to the office
- One in three workers have reported strain on mental illness related to returning to the office
 - Workers who experienced such were five times more likely to report taking on reduced responsibility
- Increase in drug/alcohol abuse (self-medicating)

Americans with Disabilities Act (ADA)

- Prevents employers from discriminating against employees with disabilities
 - Disability is technically defined as a physical or mental impairment that substantially limits a major life activity
 - Disability is broad enough in reality to include most medical conditions
 - Employees with disabilities must be treated the same as others
- Requires employers to accommodate employees with disabilities (if necessary, and only if reasonable) to enable them to perform essential functions
- Requires that employee medical information be treated as confidential
- Regulates when employees can be subjected to medical examinations and inquiries

Americans with Disabilities Act (ADA)

- The ADA is filled with employee protections
- The ADA is sufficiently flexible for employers when addressing workplace issues driven by employee mental illness
- These issues may be addressed at either the pre-employment or post-employment stage
- **How mental issues are addressed is key**
 - **Can be difficult – mental illness is not something you can typically see**

Mental Impairment as Disability under ADA

- Remedial effects of medication and treatment are irrelevant.
- An employee with a mental disability controlled by medication is still an employee with a disability.
 - But may not be a qualified employee with a disability based on type of job and medication taking
- Examples:
 - Employee with bipolar disorder
 - Employee with anxiety disorder

What's Allowed Under the ADA?

- For applicants, employers may **not** ask about medical history or require medical examinations **until after** a job offer has been extended.
- **After** a job offer has been extended employees:
 - May be asked extensively about their personal medical history
 - May be required to submit to comprehensive medical examinations
- If an employer decides to withdraw a job offer based on this medical information, it may lawfully do so **only** if the reason is job related and a business necessity
 - Which means only if no accommodation of the medical issue is possible

What's Allowed Under the ADA?

- For employees, employers must guide themselves by similar principles
 - Employers are permitted to require employees to submit to medical examinations
 - Examinations must be **job-related** and **necessary for the business**
- Most employers do not conduct, and do not need to conduct, routine medical examinations
 - Those that do conduct them need to ensure not just that the information collected is job-related and a business necessity, but that the examination itself meets this standard
 - These are legally challenging

Employer Challenges

- Medical examinations can provide a false sense of security
- Mental illness manifests in the workplace most often as an employee problem
 - low productivity
 - poor attendance
 - interpersonal conflict
 - troublesome behavior
- These may be observed by the employer or reported by employees
- Employer may suspect mental illness is responsible

Investigations – Mental Illness

- **During an investigation, focus on facts, not suspicions**
- Focus only on poor performance, poor attendance, or the unacceptable behavior
- Discuss areas of legitimate expectations
- Clearly communicate expectations
- If the conduct or deficiencies are tied to a mental health issue, **let the employee** make that connection
- **If situation is severe, remove from duty and have fitness evaluated**
- If mental illness is suspected, Human Resources should be involved in the discussion in the event the employee does raise the topic

Employee Does Not Claim Mental Illness

- Take suspicion out of the equation and treat it as a routine performance or behavior improvement situation
- Communicate your legitimate expectation
- Advise how the employee must improve
- If the employee does not improve, move forward with the next step of corrective action
- It is almost always incumbent up the employee to raise mental illness as a factor before the employer has an obligation to change its routine approach to the situation

Employee Claims Mental Illness

- If employee raises a mental health issue during the discussion, they should be cautioned to share only the information related to the conduct/performance at issue
- Assure employee all information shared will be treated confidentially
- Satisfy yourself that the employee remains fit to perform job duties
- Determine whether the employee may need some kind of accommodation
- Discuss the situation with the employee and understand their perspective on the situation

Employee Claims Mental Illness

- Obtain documentation or additional information from the treating health care professional
 - This can be confirmation of what the employee has reported or to obtain additional facts
- Consider whether you need or want to consult with your own medical or mental health professional to better understand a situation or to obtain guidance on next steps
- In some cases a fitness for duty examination is warranted
 - Considering having a medical professional on retainer for quick consultations or quick referrals to specialists
 - This ensures better – and more defensible – decisions

Accommodation Process

- Ultimately a physician may provide advice and recommendations on whether and how to manage the condition in the workplace
- If an employee's mental illness is medically assessed as posing significant, ongoing workplace risk, it might not be capable of accommodation
- Or it may be suited to accommodation, but not in the employee's current role
- Employers should consider what other positions the employee could safely and adeptly fill
- Employers should also consider whether aspects of the employee's current position could be adjusted to better enable the employee to perform the job
- Modifications to employee's current job may be suggested/required

Accommodation Process

- Employees should be included in the reasonable accommodation process
- Ask employees directly what accommodations they believe are necessary and what accommodations they would like the employer to make
- The employer does not have to accept the employee's requested accommodation, as long as it provides an effective accommodation
- The employer ultimately decides what accommodations, if any, will be provided

Accommodation Process

- If an employer decides that an employee's mental condition cannot be accommodated in the workplace, it may be because the employee poses a direct threat to himself/herself or others
- The ADA recognizes that some conditions cannot be accommodated, but it sets a high standard of proof
 - In those cases, a fitness for duty examination should be conducted by a mental health professional
 - Because this is such a high legal standard, expert medical advice is essential

Accommodations - Leave

- "Mental Health Day (Week/Month)"
- Some employees may qualify for medical leave under the FMLA or company policy for treatment of mental illness.
- Mental health issues can be a "serious medical condition" under the FMLA.
- Return to work plan.

- What about employees who refuse to do certain tasks because they are mentally taxing on them a la Naomi Osaka?
 - Are these tasks essential functions?
 - Can an accommodation be provided?

Direct Threat

- A significant risk of substantial harm to the health or safety of that employee or others, which cannot be eliminated or reduced by reasonable accommodation.
- If an employee is threatening harm to themselves or others (including nonemployees), they pose a direct threat.
 - Call 9-1-1 immediately (even if you do not believe the employee will follow through)
 - Do not try to negotiate with employee yourself (you may mean well, but you aren't qualified and could make the situation worse)
 - Do not put other employees in harm's way.

Accommodations – Remote Work

- Extended Remote Work
 - Prior to Covid, courts were reluctant to agree with employees that essential functions could be performed at home
 - This will likely be more difficult for employers to prove because of Covid's remote work prevalence
 - Can you prove it's an undue burden to allow employee to work remotely?

Depression/Stress – Potential Accommodations

- Encourage use of stress management techniques to deal with frustration
- Allow the presence of a support animal
- Allow telephone calls during work hours to doctors and others for needed support
- Use mentor or supervisor to alert the employee when his/her behavior is becoming unprofessional or inappropriate
- Assign supervisor, manager, or mentor to answer the employee's questions
- Restructure job to include only essential functions during times of stress
- Refer to counseling, employee assistance programs (EAP)
- Provide backup coverage for when the employee needs to take breaks
- Allow flexible work environment:
 - Flexible scheduling
 - Modified break schedule
 - Leave for counseling
 - Work from home/Flexi-place

Panic Attacks – Potential Accommodations

- Allow the employee to take a break and go to a place where s/he feels comfortable to use relaxation techniques or contact a support person
- Identify and remove environmental triggers such as particular smells or noises
- Allow the presence of a support animal
- Case Scenarios (Panic Attack)
 - A secretary with post-traumatic stress disorder (PTSD), who had been carjacked several years earlier, experienced significant anxiety during commutes after dark. This caused difficulty concentrating and irritability. She was accommodated with the ability to have a support animal at work and a flexible schedule with work from home during periods of minimal sunlight.

Concentration – Potential Accommodations

- Reduce distractions in the work area:
 - Provide space enclosures, sound absorption panels, or a private office
 - Allow for use of white noise or environmental sound machines
 - Allow employee to listen to soothing music
 - Provide noise cancelling headset
 - Plan for uninterrupted work time
 - Purchase organizers to reduce clutter

Other Potential Accommodations

- Increase natural lighting or provide full spectrum lighting
- Allow flexible work environment:
 - Flexible scheduling
 - Modified break schedule
 - Work from home/Flexi-place
- Divide large assignments into smaller tasks and goals
- Use auditory or written cues as appropriate
- Restructure job to include only essential functions
- Provide memory aids such as schedulers, organizers, and / or apps

Promoting Mental Health Awareness

- Employees are reporting quitting rather than return to the workplace
 - How can we retain our employees
 - How do we ensure satisfactory performance and productivity
- Managers/supervisors need to learn that employees are struggling
- Employee Assistant Programs
- Appreciation Programs
- Mental health self-assessment tools
- Free or subsidized clinical screenings for depression from mental health professional followed by feedback and clinical referral (when appropriate)
- Health insurance with no or low out-of-pocket costs for depression medications and mental health counseling.
- Free or subsidized life style coaching, counseling, or self-management programs.
- Distribute materials, such as brochures, fliers, and videos about signs and symptoms of poor mental health and opportunities for treatment

Promoting Mental Health Awareness

- Host seminars or workshops addressing depression and stress management techniques, like mindfulness, breathing exercises, and meditation, to help employees reduce anxiety and stress and improve focus and motivation.
- Create and maintain dedicated, quiet spaces for relaxation activities.
- Provide managers with training to help them recognize the signs and symptoms of stress and depression in team members and how to lawfully encourage them to seek help from qualified mental health professionals.
- Give employees opportunities to participate in decisions about issues that affect job stress.

Success Stories

- Prudential Financial
 - Monitors the effect of supervisors on worker wellbeing, especially when supervisors change.
 - Conducts ongoing, anonymous surveys to learn about attitudes toward managers, senior executives, and company as a whole.
 - Normalizes discussion of mental health by having senior leadership share personal stories in video messages.
- Certified Angus Beef
 - Provides free wellness consultations by onsite clinical psychologist. Employees do not have to take leave to access these services.
 - Holds lunchtime learning sessions to reduce stigma about mental health and the services available to employees.
 - Offers quarterly guided imagery relaxation sessions to teach stress management strategies

Little Things That Can Mean A Lot

- Is the office environment depressing looking?
 - New paint
 - Flowers
 - New lighting/window coverings
 - New art on the walls
- Changes to dress code/loosening dress code every once in a while
- Treats in the breakroom/pizza party/bagel breakfast (Covid cautious of course)
- Please/Thank You
- Recognize Jobs Well Done
- Smiling Is Contagious (even through a mask)



QUESTIONS?

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