



The EEOC Issues Publications on Mental Health Conditions

By Matthew Kelly

Employers' obligations under the Americans with Disabilities Act (ADA) are often confusing and vague. Last month, the Equal Employment Opportunity Commission (EEOC) issued two resource documents in Q&A format, which summarize the workplace rights of job applicants and employees who have mental health conditions. Although the publications offer little in clarification and, in some instances, an expansive view of the ADA, they provide some guidance in identifying the current issues relating to mental health conditions that employers should be aware of.

The publications are titled “**Depression, PTSD, & Other Mental Conditions in the Workplace: Your legal Rights**” and “**The Mental Health Provider’s Role in a Client’s Request for a Reasonable Accommodation at Work.**” Here are the key takeaways:

Myths and Stereotypes. Employers should be cautious of using “myths and stereotypes” when making employment decisions. Employment decisions, such as those related to hiring, promotion, and termination, must be based on objective evidence that an applicant or employee is unable to perform his or her essential job functions or would create a significant safety risk, even with a reasonable accommodation (as addressed below).

Employee Privacy. Employers should proceed with caution when contemplating whether to ask an applicant or employee about his or her mental condition, even if the employer is doing so with good intentions. The EEOC warns that an employer can only ask medical questions, including ones about mental health conditions, in four situations:

1. When an employee asks for a reasonable accommodation.
2. After the employer has made a job offer, but before employment begins, as long as everyone entering the same job category is asked the same questions.
3. When an employer is engaging in affirmative action with people with disabilities and the applicant/employee has the choice whether to respond.
4. On the job, when there is objective evidence that the employee may be unable to do his or her job or that he or she may pose a safety risk because of a mental health condition.

Reasonable Accommodation. An employer’s duty to provide a “reasonable accommodation” for a mental health condition is the same as it would be for a physical disability. The duty is triggered when an applicant or employee with a qualified mental or physical disability requests one. If the request is oral, an employer may ask an individual to put his or her request in writing and for him or her to generally describe the condition and how it affects his or her ability to apply for or do his or her job. An employer may also ask an individual for a letter from his or her health care provider

documenting that he or she has a mental health condition and that he or she needs an accommodation because of it. Once the individual does so, both parties must engage in an interactive process to assess whether the individual's disability can be reasonably accommodated. Common examples of reasonable accommodations include scheduling around medical appointment, time off for treatment, or changes in supervisory methods (*i.e.*, providing written instruction, breaking tasks into smaller ones). But, the reasonable accommodation will be factually specific to the needs of the individual's disability and his or her job functions.

Given the EEOC's new guidance, employers should review their legal obligations under the ADA to applicants and employees.