

MENTAL HEALTH ISSUES IN THE WORKPLACE

Delaware Valley Labor & Employment Conference

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MENTAL ILLNESS

- Each year **1 in 5** adults in the U.S. experiences some form of mental illness
- During that time period, approximately **1 in 25** adults experiences serious mental illness that substantially interferes with a major life activity

BEHAVIORAL CHARACTERISTICS

- Deteriorating performance
- Does not accept criticism and blames others for his/her poor performance
- Unexplained increase in absenteeism, and/or vague physical complaints
- Increased severe mood swings, and noticeably unstable or emotional responses
- Frequently loses temper; personality conflict with one or more co-workers; or holds grudges
- Marked personality changes over time
- Confused thinking
- Increased use of alcohol and/or illegal drugs
- Depression/Withdrawal

TOPICS TO BE COVERED

1. Mental Health and Job Performance
2. Accommodating Mental Illness
3. Violence in the Workplace

MENTAL HEALTH AND JOB PERFORMANCE

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PERFORMANCE AND PRODUCTIVITY

- By some estimates, untreated mental health conditions, such as depression, cost U.S. employers up to \$44 billion annually in lost productivity
- Depression is estimated to cause 200 million lost work days each year
- Only 29% of workers with depression seek treatment

TIPS TO COMBAT DEPRESSION AND INCREASE PRODUCTIVITY

- Promote awareness through Employee Assistance Programs (EAP)
- Ensure employees have access to psychiatric services through health insurance benefits
- Train supervisors to recognize depression
- Hold voluntary depression screenings for employees

ACCOMMODATING MENTAL ILLNESS

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RELEVANT LAWS

1. Americans with Disabilities Act
2. Family and Medical Leave Act
3. Pennsylvania Human Relations Act

AMERICANS WITH DISABILITIES ACT

- The ADA is an anti-discrimination statute prohibiting discrimination:
 - In hiring, firing, advancement, training, compensation, and other terms and conditions of employment
 - By employers
 - Against “qualified individuals with a disability”

ADAAA: THE ADA AMENDMENTS ACT

- Amended January 1, 2009
- Focus less on whether person is disabled or “protected”
 - Shifts focus away from a “disability” inquiry to:
 1. Whether discrimination occurred and
 2. Whether an accommodation is necessary
 - Focuses more on whether person can or is doing the job, with or without an accommodation
- Encourages use of interactive process to see if accommodation is available to allow disabled workers to perform the job

REASONABLE ACCOMMODATIONS UNDER THE ADA

- The EEOC has recognized the following as examples of reasonable accommodations for employees with psychiatric disabilities:
 - Flexible Workplace – Telecommuting and/or working from home
 - Scheduling – Part-time hours, job sharing, adjustments to start/stop times
 - Leave – Sick leave for reasons tied to mental health, flexible use of vacation time, additional unpaid leave or leaves of absence
 - Breaks – Breaks according to individual need rather than fixed schedule
 - Other Policies – Beverages and/or food at workstations to mitigate side effects of medication, on-site job coaches

FAMILY AND MEDICAL LEAVE ACT

- Provides eligible employees of covered employers the right to take up to 12 work weeks of unpaid leave in a 12 month period for:
 - The birth of a son or daughter, and to care for the newborn child
 - The placement with the employee of a child for adoption or foster care, and to care for the newly placed child
 - To care for an immediate family member (spouse, child or parent – but not a parent “in-law”) with a serious health condition
 - When the employee is unable to work because of his/her own serious health condition
 - Qualifying exigency leave for family on active military duty
- Provides 26 work weeks of unpaid leave in a 12 month period to care for a military service member

EMPLOYEE ELIGIBILITY CONSIDERATIONS

- A qualifying employee is one who has been employed for 12 months and has worked 1,250 hours over the preceding 12 month period
- The employee must request leave for a qualifying reason such as his/her own “serious health condition,” which includes any injury, illness, impairment, or physical or mental condition:
 - Involves any period of incapacity involving inpatient care, provided the patient care includes an overnight stay or
 - Requires “continuing treatment” by a healthcare provider
 - Employee must have an in-person visit with a healthcare provider within 7 days of the first day of incapacity
 - “Treatment” includes prescribing medicine, performing a medical procedure, and conducting tests and exams to determine the existence of a serious health condition
 - Healthcare provider includes doctors, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse-midwives, clinical social workers, and any physician assistant acting within her practice under state law

INTERMITTENT LEAVE

- The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule when it is medically necessary to care for a seriously ill (qualified) family member, or because of the employee's serious health condition
- Such leave includes partial and full day absences

PENNSYLVANIA HUMAN RELATIONS ACT

- State law equivalent of the ADA
- Applies to employers with “four or more” employees
- Affords complainants the right to file with the Pennsylvania Human Relations Commission

EMPLOYEE DOES NOT DISCLOSE CONDITION

Louisa was hired six months ago by a major accounting firm as a management level employee. She's bipolar but has not disclosed her condition to her employer, but has vaguely mentioned her "manic" phase, her medications, and her "depressive" phase in passing. While she started off coming to work on time and working normal hours, in the last few weeks Louisa has started arriving at 5:00 PM and working through the night. She gets all of her work done, but is not around to interact with colleagues, including the employees who report to her. Instead, she maintains erratic contact during the day via email. Louisa's bosses are concerned. She has not asked for an accommodation or leave.

What should her employer do?

THE TIMING OF AN ACCOMMODATION REQUEST

Ellen has worked for a large bank for the past ten years. Recently, Ellen's manager, Denise, has witnessed Ellen falling asleep at her desk, getting into verbal altercations with colleagues, and, generally, appearing disheveled. Denise counsels Ellen on more than one occasion about her conduct. Ellen's performance finally comes to a head when she makes a significant mistake with a major account and costs her employer an important client. In the course of firing Ellen, she tells Denise for the first time that she's suffering from clinical depression and is on a new medication, which has caused her to behave erratically.

Is the bank legally required to retain Ellen as an employee because of the disclosure?

VIOLENCE IN THE WORKPLACE

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SCOPE OF VIOLENCE IN THE WORKPLACE

- In the United States, between 2006 and 2010, an average of 551 workers per year were killed as a result of work-related homicides
- Between January 2009 and July 2015 there were 133 mass shootings
- Shootings account for 78% of all workplace homicides
- 83% of these shootings occur in the private sector

TYPES OF WORKPLACE VIOLENCE

Physical Violence

- Arson
- Assault
- Harassment
- Homicide
- Rape
- Robbery
- Vandalism

Non-Physical Violence

- Verbal
- Visual
- Written

Domestic Violence

PREVENTION OF WORKPLACE VIOLENCE

- Preventive measures can reduce chance of an incident occurring in the workplace and reduce exposure to liability if an incident occurs
- Be Proactive:
 - Pay attention to threatening or inappropriate behavior
 - Increase physical security
 - Limit access to workplace or security checkpoint (i.e. key card)
 - Carefully screen applicants
 - Prohibit employees from bringing weapons into the workplace
 - Implement a workplace Anti-Violence and Anti-Bullying Policy
 - Teach supervisors conflict resolution skills
 - Train your supervisors
 - Develop a plan in advance to respond to an observed or reported event

TRAINING

- Educate supervisors and workers generally to be alert to various warning signs besides verbal or written threats, including:
 - Abusive behavior
 - Stalking
 - Fascination with guns, other weapons and mass shootings
- Encourage employees to report any incidents of threats or other unusual behavior that may suggest the possibility of a future violent act; stress need to be proactive
- Explain penalties for violating policy
- Non-retaliation assurances
- Cover basic emergency procedures in the event of an incident

HANDLING THE VIOLENT EMPLOYEE

- Managing employees:
 - Supervise
 - Counsel
 - Evaluate
 - Discipline
- Investigate complaints of violence
- Workplace searches

EMPLOYEE THREATENS OTHER EMPLOYEES

Yvonne does not get along with other employees at the manufacturing plant where she works. One night she confronts Brian, Tonya, and Laura and accuses them of spraying her with poisonous chemicals. Yvonne threatens to “f*** them up.” A union steward overhears the threats and promptly alerts Carl, a supervisor, about the escalating situation.

What should the company do?

- A. Discharge all of the employees involved
- B. Discharge Yvonne only for making threats
- C. Put all of the employees involved on last chance agreements
- D. We don't have enough facts, so investigate further

AFTER THE INVESTIGATION

The company decides to investigate further and Carl interviews Brian, Tonya, and Laura. During the course of those interviews, Yvonne tries to barge into the room several times. When Yvonne is finally interviewed, she complains about being sprayed by chemicals on multiple occasions and continues to make threats. Yvonne is escorted out of the building and into the parking lot.

Should Carl or other company officials take additional steps?

- A. Alert plant security
- B. Contact the police
- C. Review internal safety plan
- D. All of the above

QUESTIONS?



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THANK YOU

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