

Mental Health Problems in the Workplace



Depression will be the second leading cause of disability in 2020, (*World Health Organization*)

Workplace Considerations

① How can you tell if an employee has a mental health problem?

- ✓ General inability to work with others;
- ✓ Decreased productivity;
- ✓ Increased accidents;
- ✓ Tiredness;
- ✓ Difficulty concentrating;
- ✓ Less interest in work;
- ✓ Grandiose ideas; and/or
- ✓ Displays of anger or defensiveness.

Workplace Considerations

2 Reasons an employee may not tell an employer about a mental health problem

- ✓ Stigma
- ✓ Discrimination
- ✓ Notice
- ✓ Policy

Workplace Considerations

3 When is an employee more likely to disclose a mental health problem?

- ✓ Privacy
- ✓ Support
- ✓ Protection from Harassment

Workplace Considerations

4 How should an employer prepare to address an employee with a suspected mental health condition?

✓ Research the company's available resources

✓ Understand the company's accommodation policies and procedures

✓ Assess employee's contributions to the organization

Disability

- Definition
 - Federal, *substantially limits* a major life activity
 - ADA applies to all employers with at least 15 employees
 - California, *limits* a major life activity
 - FEHA applies to all employers with at least 5 employees
 - Major Life Activity
 - Concentrating
 - Thinking
 - Communicating
 - Interacting with others



Reasonable Accommodation Evaluation Triggers

The Employee Notifies:

- ✓ Employee's supervisor
- ✓ A supervisor or manager in the employee's chain of command
- ✓ The EEO office
- ✓ Any other office designated by the employers to oversee the reasonable accommodation process
- ✓ In connection with the application process, any employee with whom the applicant has contact

What is a Request for Reasonable Accommodation?

- A statement that the employee needs a change in their work due to a disability or medical condition
 - May be made in “plain English” and need not mention ADA, FEHA, disability, or reasonable accommodation
- May be made by family member, friend, healthcare provider, or other representative

The Interactive Process

- Reason for Interactive Process
 1. Assess the nature of the employees limitations
 2. Assess the employee's ability to perform essential functions of the job
 3. Identify possible accommodations
 4. Analyze the reasonableness of each accommodation

The Interactive Process

- Determine Essential Functions
 1. Reason position exists
 2. Limited number of employees
 3. Highly specialized



The Interactive Process

- The Interactive Process Meeting

1. Do not attempt to diagnose disability or medical condition
2. Approach from a job performance issue
3. Refer to EAP or insurance provider
4. Schedule a follow-up meeting as necessary
5. Document the meeting

The Interactive Process

- Can the Employer Provide the Appropriate Accommodation Employees Will Need?
 1. Functional limitations limiting employee's ability to carry out job
 2. What accommodations are available
 3. Undue hardship on employer

The Interactive Process

- Employers have the Right to Request Certain Medical Information



Reasonable Accommodation Categories

Application process that enables a qualified applicant with a disability to be *considered for the position desired*;
or

Work environment that enables a qualified employee with a disability to *perform the essential functions* of the job; **or**

Enables an employee with a disability to *enjoy equal benefits* and privileges afforded other non-disabled employees.

Reasonableness



- Seems reasonable on its face.
- Is effective in meeting the needs of the employee to perform the essential functions of the job; and
- Allows employee an equal opportunity to enjoy the benefits and privileges of employment.

Possible Accommodations

1. Flexible Work Schedule
2. Leaves of Absence
3. Restrict Tasks/Reallocate Duties
4. Increased Interpersonal Communication
5. Provide a Job Coach
6. Modify Company Policy/Training
7. Address Time Pressures and Multiple Tasks
8. Reassignment/Job Restructuring
9. General Accessibility
10. General Modifications



Common Employer Mistakes

- 1 Fail to consider transfer of employee to vacant position
- 2 Follow “100-percent healthy rule”
- 3 Assert “essential functions defense”
- 4 Refuse to grant reasonable accommodation because of an inflexible reliance on company rules
- 5 Have a mismanaged return-to-work plan, or no plan
- 6 Fail to properly engage in the interactive process

Recent Case Law



- *Swanson v. Morongo Unified Sch. Dist.*
- *Curley v. City of North Las Vegas*
- *Kao v. University of San Francisco*
- *EEOC v. Ford Motor Co.*

Conclusion

- *Take Aways:*
 - Recognize the signs of potential mental disabilities
 - Engage in a back-and-forth dialogue regarding reasonable accommodations
 - Document
 - Document
 - Document



Thank You

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Question & Answer
Session