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Anxiety, ADHD, Depression…oh my.

Mental Health Issues in the Workplace

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TODAY'S PURPOSE

Educate employers and employees on destigmatizing mental illness in the workplace.

CONSIDER:

- Nearly 85% of people say they're uncomfortable discussing mental illness at work.
- Approximately 1 in 4 adults suffer from a mental illness.

THE RESULT:

- Problems in your workplace.

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(Source: https://www.mentalhelp.net/aware/the-stigma-of-mental-illness/)

THE ADA

- Employees with mental health impairments have rights, and employers have certain obligations and duties under the law.
- The Law: the Americans with Disabilities Act (the “ADA”). What’s that?

THE ADA

- What it does: The ADA prohibits discrimination and harassment in the workplace, including hiring.
- What it says: Employers must provide a reasonable accommodation to a qualified employee or job applicant who has or develops a disability—physical or mental—that substantially limits one or more of that employee's major life activities.
- A disabled individual who is qualified under the ADA can perform the essential functions of their job with or without accommodation.

BREAK. IT. DOWN.

WHAT'S A "DISABILITY?"

- A physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

- Broadly construed, in other words, **don't overthink it.**

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MENTAL IMPAIRMENTS

- Very common - one in four adults suffer from a mental disability.
- May be any psychological or mental disorder, such as an emotional or mental illness.
- Examples: major depression, bipolar disorder, anxiety disorders, panic disorder, OCD, and PTSD, schizophrenia, and personality disorders

MAJOR LIFE ACTIVITY – LIKE WHAT?

Well…

- Hearing
- Speaking
- Communicating
- Thinking
- Concentrating
- Focusing

All may be substantially affected by a disability.

REASONABLE ACCOMMODATION

What is it?

- A change in the way duties are performed to help a disabled employee perform their job duties or enjoy the benefits and privileges of employment.

Who gets to decide the accommodation?

- The employer and employee together through an “interactive process.”

INTERACTIVE PROCESS – JUST A TALK!

- Scope of limitation on employee's performance
- Any reasonable accommodations that might aid the employee to perform the essential functions of the job.
- Ongoing duty
- Document!

MUST AN EMPLOYER PROVIDE ANY REASONABLE ACCOMMODATION?

Yes. UNLESS providing the reasonable accommodation would cause "undue hardship."

UNDUE HARDSHIP:

- A significant difficulty or expense for the employer given its size, financial resources, and the needs of the business.
- An employer may not refuse to provide an accommodation just because it involves *some* cost.
- Most accommodations are free or less than $500.

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ESSENTIAL FUNCTIONS OF THE JOB

- Employer obligations: identification
- Where and why job descriptions are important
- Example: telework - is attendance an essential function? Sometimes.
- Employee obligations: that they can do them
- Document, as always

COMMON REASONABLE ACCOMMODATIONS

- Flexible work schedule
- Telework
- Email reminders
- Provide written instructions
- Use flow-chart to indicate steps in a task
- Divide large assignments into several small tasks to promote goal-setting
- Provide a checklist of assignments

COMMON REASONABLE ACCOMMODATIONS

- Use weekly chart to identify daily work activities
- Instruct supervisor to assign prioritization of tasks
- Assign new project only when previous project is complete, if possible
- If possible, automate paperwork by creating electronic files
- Save time filling out paper forms by completing information in advance, using pre-filled forms

COMMON REASONABLE ACCOMMODATIONS (CONT'D)

- Job structuring to include only essential functions;
- Allow employee to record meetings;
- Provide a mentor for guidance and work with supervisors to provide daily or weekly feedback;
- Use checklists in place of writing text

HOW CAN YOU FIGURE THIS OUT?

Because many mental health impairments are not obvious or visible, employers may be unaware of accommodations that may be effective or hesitate to provide accommodations for a seemingly difficult employee.

Employers may:

- Request information from the employee's medical provider documenting the disability and the functional limitations caused by that disability INITIALLY
- Provide a different accommodation than what the employee requests

EMPLOYEE OBLIGATIONS

- Explain your condition to your supervisor or manager.
- If your mental health impairment is invisible, employers cannot provide a reasonable accommodation if they do not know one is needed.
- No magic words are needed.

SUGGESTIONS FOR EMPLOYEES

- Document, via email, your discussion about reasonable accommodation.
- Be open to interactive discussion.
- E.g., “I am dealing with [OCD, depression, ADHD], and I need an accommodation to do my job well.”

FOR EMPLOYERS

- Train managers and supervisors.
- Initiate the interactive discussion to open the door to employees who may want help but fear the consequences of telling their employer they have a mental impairment.
  - Example: “I see you are having trouble (concentrating, communicating, socially interacting). Is there anything we can do to help you?”
- Determine whether medical certification is needed.

FOR EMPLOYERS (CON'T)

- Learn about the disability
- Provide the accommodation (affirmative duty)
- Provide a work environment free of harassment where the harassment is based on a person's disability
- Document conversations with employees
  - Avoids misunderstandings
  - Helps with defense in case of discrimination charge
  - Minimizes risks and liability

FINDING INFO ON IMPAIRMENTS

EEOC

- The Equal Enforcement Opportunity Commission enforces anti-discrimination laws, including the ADA. (www.eeoc.gov)

Job Accommodation Network Provides accommodations by disability or limitation for employees and employers (askjan.org)

Consult an employment attorney

COMPANY POLICIES AND PROCEDURES

- Clear, thorough policies for employees and third parties (e.g., vendors) who discriminate or harass other employees based on mental illnesses
- Offer of self-identification
  - Why?
  - Conduct/performance
- Training
- Commitment to diversity, inclusion, and tolerance toward those with mental disorders from the top down
- Thorough documentation (yes, again. I cannot state it enough.)

QUESTIONS?

Call or email me:

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