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The Mental Health Provider's Role in a Client's Request for a Reasonable Accommodation at Work

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The Federal Employee Advocate is publishing here the EEOC's Guidance on the Mental Health Provider's Role in a client's request for a reasonable accommodation at work. The law firm of Josh F. Bowers, P.C. has extensive experience representing Federal employees who suffered disability discrimination.

Disclaimer

The legal information in this article is intended as a general overview of this issue and is subject to change; it is not meant to serve as legal advice in any particular situation. The law is in a constant state of change as Congress amends statutes; Federal Agencies issue and amend regulations, and the courts issue decisions interpreting the laws and regulations. We recommend you consult a licensed lawyer who is knowledgeable about the area of law in question before you take action to address a legal matter.

The Mental Health Provider's Role in a Client's Request for a Reasonable Accommodation at Work

Many people with common mental health conditions have a right to a reasonable accommodation at work under the Americans with Disabilities Act (ADA). When requesting accommodations, clients may sometimes need supporting documentation from their mental health providers. This Fact Sheet briefly explains the law of reasonable accommodation and the mental health provider's role in the accommodation process.

1. What Is the ADA?

The ADA is a federal law that prohibits employers with 15 or more employees from discriminating on the basis of disability, and gives employees and job applicants with disabilities a right to a reasonable accommodation at work. It also provides rights outside the employment context, not discussed here.

2. What Is a Reasonable Accommodation?

A reasonable accommodation is a change in the way things are normally done at work that enables an individual to do a job, apply for a job, or enjoy equal access to a job's benefits and privileges. Common reasonable accommodations include **altered break and work schedules** (e.g., scheduling work around medical appointments), **time off for treatment, changes in supervisory methods** (e.g., providing written instructions, or breaking tasks into smaller parts), **eliminating a non-essential (or marginal) job function that someone cannot perform because of a disability**, and **telework**. Where an employee has been working successfully in a job but can no longer do so because of a disability, the ADA also may require **reassignment to a vacant position** that the employee can perform. These are just examples; employees are free to request, and employers are free to suggest, other modifications or changes.

3. Does My Client Need to Have a Particular Condition to Get a Reasonable Accommodation?

A reasonable accommodation may be obtained for any condition that would, if left untreated, "substantially limit" one or more major life activities, which include brain/neurological functions and activities such as communicating, concentrating, eating, sleeping, regulating thoughts or emotions, caring for oneself, and interacting with others. (The client does not actually have to stop treatment. The client's symptoms in the absence of treatment are merely considered in order to determine whether the person has a "disability" under the ADA.)

A condition does not have to result in a high degree of functional limitation to be "substantially limiting." It may qualify by, for example, making activities more difficult, uncomfortable, or time-consuming to perform compared to the way that most people perform them. Further, if the client's symptoms come and go, what matters is how limiting they would be when present. Federal regulations say that some disorders should easily be found to be disabilities, including major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia. Other conditions may also qualify depending on the individual's symptoms. Additionally, an individual may qualify for a reasonable accommodation if he or she has had a substantially limiting impairment in the past.

The ADA, however, does not protect individuals currently engaging in the illegal use of drugs, where an employer takes an action based on such use. Someone with alcoholism or who was addicted to drugs in the past may be entitled to a reasonable accommodation, such as time off for treatment. However, the ADA specifically says that employers are not required to

tolerate employees using or being under the influence of alcohol or illegal drugs on the job, or unsatisfactory performance or conduct relating to the use of alcohol or illegal drugs.

4. What Kind of Reasonable Accommodation Could My Client Get?

If your client has a disability, the employer is legally required to provide a reasonable accommodation that would help your client do the job. If more than one accommodation would work, the employer may choose which one to provide. However, an employer cannot be required to provide an accommodation that is simply unreasonable on its face (that is, not plausible or feasible), or that would cause significant financial or operational difficulty. It also never has to excuse a failure to meet production standards or rules of conduct that are both necessary for the operation of the business and applied equally to all employees, or to retain an individual who cannot do the job even with a reasonable accommodation.

5. When Is It Important for My Client to Request a Reasonable Accommodation?

Because an employer does not have to excuse failure to meet production standards that are consistently applied, even if the difficulty was caused by a health condition or the side effects of medication, it could be in your client's interest to request an accommodation before any problems at work occur or become worse. An accommodation may help to prevent discipline or even termination by enabling your client to perform the job successfully.

6. How Can I Help My Client Get a Reasonable Accommodation?

Your client may ask you to document his or her condition and its associated functional limitations, and to explain how a requested accommodation would help. The employer, perhaps in consultation with a health care professional, will use this information to evaluate whether to provide a reasonable accommodation, and if so which one. The person evaluating the accommodation request also may contact you to ask for clarification of what you have written, or to provide you with additional information to consider. For example, you may be told about a particular job function and asked whether the requested accommodation would help your client to perform it, or you may be asked whether a different accommodation would be effective where, for example, the requested accommodation would be too difficult or costly for the employer to provide.

Employers are required to keep all information related to reasonable accommodation requests confidential.

7. Am I Permitted to Disclose My Client's Medical Information?

The ADA does not alter a health provider's ethical or legal obligations. You should request a reasonable accommodation on behalf of a client or provide an employer with medical information about the client only if he or she asks you to do so and signs a release.

8. Could an Employer Discriminate Against My Client Because of the Information I Provide?

The ADA prohibits employers from harassing your client because of a mental health condition, and from terminating or taking other adverse actions against your client because of a mental health condition. Therefore, unless the information you provide shows that your client is unable to perform the essential duties of the job even with a reasonable accommodation, the employer legally cannot take adverse action based on the information.

However, employers sometimes discriminate illegally. You therefore may wish to discuss with your client the risks associated with disclosing the condition (such as potential illegal discrimination), and with not disclosing it (such as not having a reasonable accommodation that may be necessary to do the job).

9. What Kind of Documentation Would Be Helpful?

Employers may require documentation that establishes how your client's condition limits job performance, and how an accommodation would help to overcome the limitations. However, you should not simply provide your client's medical records, because they will likely contain unnecessary information. Documentation is most likely to help your client obtain a reasonable accommodation if it explains, using plain language, the following:

- Your professional qualifications and the nature and length of your relationship with the client. A brief statement is sufficient.
- The nature of the client's condition. Based on your professional judgment, state the nature of the client's mental health condition, even if the client is currently not experiencing symptoms (e.g., because of the use of medication or because the condition is in remission). If your client asks you not to disclose the specific diagnosis, it may be sufficient to state the general type of disorder (e.g., "an anxiety disorder"), or to describe how the condition substantially limits a brain/neurological function or some other major life activity.
- The client's functional limitations in the absence of treatment. Describe the extent to which the condition *would* limit a brain or neurological function, or another major life activity (e.g., concentrating, interacting with others, eating, sleeping,

learning, reading, communicating, or thinking), in the absence of therapy, medication, and any other treatment. If the symptoms of the condition come and go or are in remission, describe the limitations during an active episode. It is sufficient to establish substantial limitation of one major life activity.

- The need for a reasonable accommodation. Explain how the client's condition makes changes at work necessary. For example, if your client needs an accommodation to perform a particular job function, you should explain how the client's symptoms - *as they actually are, with treatment* - make performing the function more difficult. If necessary, ask your client for a description of his or her job duties. *Limit your discussion to the specific problems that may be helped by a reasonable accommodation.* Also explain to the employer why your client may need an accommodation such as a schedule change (e.g., to attend a therapy appointment during the workday) or time off (e.g., to adjust to a new medication, receive treatment, or recover).
- Suggested Accommodation(s). If you are aware of an effective accommodation, you may suggest it. Do not overstate the need for a particular accommodation, in case an alternative is necessary.