

Mental Health Issues in the Workplace and ADA/FMLA Compliance

Physical illness or disability is generally easy to recognize and may be covered under the Americans with Disabilities Act (ADA) or Family and Medical Leave Act (FMLA). Mental disability and illness, while not as easy to recognize, is also covered by ADA and FMLA. It is quite likely that there are employees in your workforce with serious mental health issues. 6.9% of the American population live with major depression in any given year and it is the leading cause of disability worldwide. In addition, 18.5% of all adults experience some form of mental illness in a given year (National Institute of Mental Health).

Here are a few tips related to best practices in managing mental illness in the workplace.

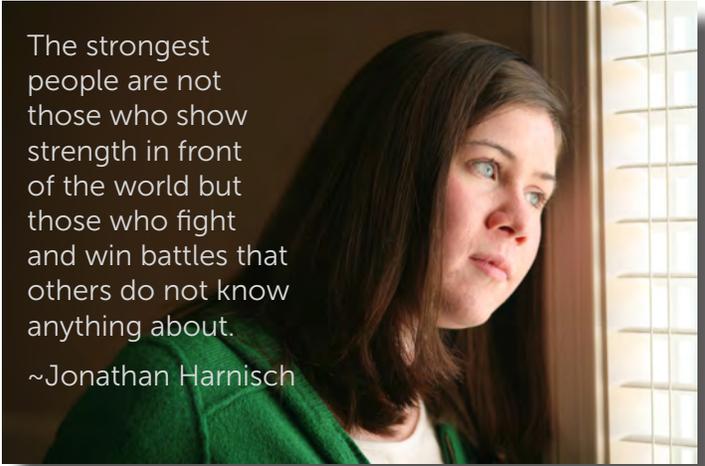
Train supervisors to know the signs of mental health concerns in the workplace. Some signs can include low energy, heightened emotionality, persistent low mood, shifts in mood, crying, irritability, cognitive confusion and memory problems. Other signs of mental impairment may be related to work performance, such as tardiness, absenteeism, unsatisfactory performance, increased error rates, accidents or injury, etc. Note that not all performance concerns can be attributable to mental illness. Supervisors should alert and involve HR immediately when an employee exhibits signs of mental impairment or if an employee discloses a mental disability. Consider offering training to supervisors through PAS (your EAP) on behavioral health awareness, the impact of mental illness on work performance, and the role of managers in addressing mental health concerns.

Don't diagnose. Be aware that an employee may be impaired and need an accommodation or FMLA notification but do not imply a diagnosis nor recommend treatment. Leave diagnosis and treatment planning to trained medical professionals. Unless an employee informs you of his/her diagnosis, stick with talking about the behaviors that you observe rather than a medical diagnosis.

Manage performance appropriately. Before taking corrective action in the case of performance concerns, consider if mental disability is a factor and if a reasonable accommodation is needed or if a current accommodation is in effect. Always consult with HR when performance concerns are not rectified with initial performance coaching. PAS is also a great resource for guidance in managing performance when simple coaching does not yield the desired results. Refer employees who are not successfully meeting performance standards to the EAP.

Recognize when FMLA or ADA regulations apply. At times an employee will self-identify having a disability or mental illness which may require accommodation, or they will request FMLA leave. However, be aware that employees do not always know the terms to use when requesting accommodation, assistance or information on what leave is available to them. Supervisors should immediately contact HR if they believe that an employee is sharing information that could constitute a health condition or disability, to determine if the employee qualifies for either ADA or FMLA.

Engage the employee early. The "interactive process" (as described in the ADA) should be initiated when an employer has knowledge of an employee's illness or disability. Ideally, the outcome of the interactive process is to determine reasonable accommodations that support the employee's

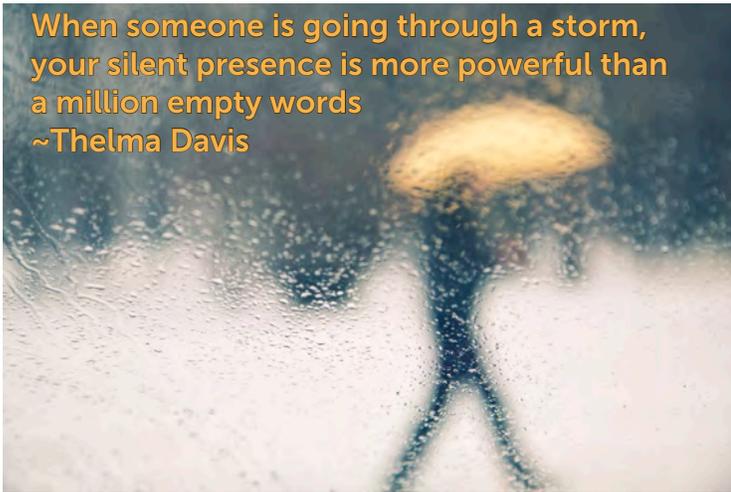


The strongest people are not those who show strength in front of the world but those who fight and win battles that others do not know anything about.

~Jonathan Harnisch

recovery or enable the employee to do his or her job despite a disability. Be open when considering reasonable accommodations; often they don't have to be expensive or complicated, and are not required if doing so would pose an undue hardship on the organization. Carefully document your conversations and engagement with the employee. Above all, follow your company's procedures and documentation requirements with respect to leave requests, absence management, requests for accommodations and performance management.

**When someone is going through a storm,
your silent presence is more powerful than
a million empty words**
~Thelma Davis



Ensure that you are promoting an inclusive workplace and reducing the stigma of mental illness. Promote a culture of care. Provide training to employees about mental health, disabilities and the value of inclusivity. Manage all employees fairly and considerately. Your calm, thoughtful demeanor will help promote a culture of care, respectful interactions and support for distressed co-workers.

If an accommodation is given to an employee:

- Provide clear expectations for performance and responsibilities. Reasonable accommodations are required if they enable employees to perform their essential job



**Your illness does not define
you. Your strength and
courage does.**
~Anonymous

functions and do not present an undue hardship for the employer. They are not intended to be a replacement for meeting performance expectations.

- Have a process to evaluate the effectiveness of an accommodation or leave. How long is the accommodation/leave required? Is the accommodation enabling the employee to perform their job satisfactorily? Do the accommodations need to be adjusted?
- Evaluate whether job expectations being met. If performance issues persist with reasonable accommodations or medical leave, consider making a supervisory referral to the EAP.

Maintain confidentiality. Per HIPAA, mental health conditions revealed to an employer for purposes of asking for a reasonable accommodation or FMLA are private health information (PHI) and must be kept confidential. Do not discuss an employee's health information with others. Employee PHI must be kept separate from employees' personnel files. Access to medical information about any employee should be given with extreme caution and only on a need-to-know basis.

Take steps if you are concerned for the safety of an employee or others in the workplace. Neither ADA nor FMLA require an employer to risk the safety of the workplace. If the situation is emergent, get the appropriate responders involved by calling 911 or on-site security, and notify HR. If the situation is urgent and you are uncertain how to proceed, call PAS. A trained management consultant will guide you through possible steps to take for the safety of all involved. If the situation warrants, PAS can also provide consultation with a forensic psychologist for more extensive workplace safety planning.



Contact PAS

for expert guidance from an EAP performance consultant when you are concerned for an employee's wellbeing, to discuss making a supervisory referral, or to arrange mental health awareness training for your supervisors and employees.

(800) 356-0845

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