

# Frequently Asked Questions from Employers

## **Q. How do I know if an employee really has a psychiatric disability?**

A. Because there is still a lot of stigma associated with mental illness, many people would not choose to acknowledge a mental illness unless they really needed to do so. However, if you are unsure whether the person has a disability that is covered under the Americans with Disabilities Act, an employer has the right to ask for documentation of the disability, the nature of the functional limitations caused by the disability that might interfere with job performance and accommodations that may address those limitations. This type of documentation can be provided by a medical doctor, clinical psychologist, or other licensed professional such as a licensed social worker, licensed mental health counselor or certified rehabilitation counselor. You are not allowed to ask for records, history of the illness, treatment or other types of personal information that are not relevant to the work situation.

## **Q. I have heard that a person can use “plain English” to tell me that they have a disability. What kinds of words can someone use to disclose a psychiatric disability?**

A. The new EEOC guidance on the ADA and people with psychiatric disability states that an applicant or employee can use “plain English” to notify an employer about a disabling condition in requesting reasonable accommodations. What this means is that there are no magic words that the person must use.

Some of the examples given in the guidance suggest that someone may say that they are “depressed and stressed” and need time off from work to deal with it. Other examples of what you might hear include:

“I have had emotional problems that I have been treated for, and may need time off for medical appointments.”

“I have a medical condition that requires breaks every 2 hours.”

“I have a chemical imbalance that periodically affects my energy levels. Every year or so, my doctor has to adjust the chemicals in my system in the hospital for about 2 weeks.”

## **Q. Once an employee discloses a psychiatric disability, what kind of information do I need and how can I get it?**

A. In general, you need to know what the effect of the disability will be on the employee’s functioning in the job. Specifics regarding psychiatric history, diagnosis and medications are not as relevant as the specific barriers that they present in the workplace. Most employers want to know such practical information such as:

What behaviors will I see or can I expect as a result of the illness or treatment?

How will these behaviors interfere with job functioning?

What should I do if I see these behaviors (what strategies or accommodations will help)?

One of the best sources of information is the employee him or herself. The employee has experience with the illness and its effects on functioning. Other sources of information may be a professional working with the person, your Employee Assistance Program staff, or the Job Accommodation Network, (800-526-7234), which provides free telephone consultation regarding employment and accommodations issues.

**Q. What kinds of accommodations work for someone with a psychiatric disability?**

A. Various types of mental illness may affect the ways that someone thinks, communicates, sleeps or feels, among other activities. The types of accommodations that work tend to be those that address these social, emotional and cognitive types of activities, such as changes in interpersonal communication, supervision and support, flexibility in schedules, and adjustments in how directions are given, tasks are organized, or time is managed.

**Q. What do I say to coworkers who want to know why an employee is getting special treatment?**

A. It is illegal to share confidential information about an employee's disability, medical condition or accommodation (indicating a disability) without the permission of the employee, with the exception of those who need to know on a business necessity basis. This means that only the person providing or approving the accommodations, those in charge of safety and risk procedures, or those responsible for Equal Opportunity or Affirmative Action need to know. All information about disability and accommodations must be kept separate from personnel files.

Coworkers who question why one employee gets to come in later or has cubicle walls installed are not entitled to know that these are accommodations or are due to a disabling condition. One complication is that many of the simple accommodations that work for someone with a mental illness are things that many employees may wish to have themselves. Employers can respond to such comments by stating that they are following employment laws (as suggested in the EEOC Guidance), or that they try to support all employees in doing their jobs, leaving the opportunity open to discuss that employee's needs at a later time.

**Q. Can I fire an employee with a disability who is not doing the job?**

A. The ADA only protects "qualified" employees. Someone is qualified if s/he can perform the job, either with an accommodation or without an accommodation. While legally employers must provide reasonable accommodations to qualified employees, employers are not expected to change the standards of performance, or the essential functions of the job itself, with the exception of modifying or eliminating marginal, or nonessential functions of the job. Typical procedures for taking disciplinary actions with employees who are not performing the essential functions of the job can be followed. If you are unsure whether you should accommodate or discipline, you can contact the Job Accommodation Network at 1-800-526-7234 for free technical assistance in sorting out these questions.

**Q. Where can I go for help with all the questions that I have?**

A. If you have questions about accommodations for a particular employee, you can contact the Job Accommodation Network at 1-800-526-7234 for free technical assistance by telephone. They can help you define the functional limitations, accommodations, essential functions of the job, and the reasonableness of an accommodation. For general information about the ADA, contact your local ADA Disability and Business Technical Assistance Center at (800)949-4232. Calling this number will connect you with the center serving your region. Many of the materials distributed by these centers are available on line at [janweb.icdi.wvu.edu/](http://janweb.icdi.wvu.edu/). For general information on mental illness, contact the National Alliance for the Mentally Ill or National Mental Health Association. See our Resources for Employers and Readings for Employers sections for more information.