DEALING WITH EMPLOYEE MENTAL AND OTHER NON-PHYSICAL DISABILITIES IN THE WORKPLACE

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Overview of Applicable Laws



ADA/WFEA
- Notice
- Interactive Process
- Documentation and follow through

FMLA/WFMLA
- Notice
- Forms/Eligibility
- Documentation and follow through

Worker's Compensation
- Light Duty
- Unreasonable Refusal to Rehire

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Common Non-Physical Disabilities

- Anxiety, Depression, SAD, Panic Disorders
- Neurodivergence: ADHD, Autism Spectrum Disorder (ASD), Dyslexia
- Narcolepsy and Insomnia
- OCD
- Agoraphobia, Claustrophobia and other Phobias
- Bipolar Disorder, Schizophrenia Antisocial Personality Disorder
- Eating Disorders
- PTSD
- Substance Use Disorders and Other Additions, (Gambling, Spending, etc.)
- Kleptomania
- Tourette's Syndrome



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When are you “aware” of a potential disability?

- Don’t speculate
  - Not required
  - Avoid claims of “perceived disability” and other complications
- Disclosure by employee
- Disclosure by third party



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Navigating the Accommodation Process Under Disability Discrimination Laws

1. Medical inquiry form by healthcare professional required?
2. Make sure you understand the substance and scope of recommendations.
3. Set clear expectations for how a need for accommodation is communicated



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Balancing Compliance and Compassion

- Understanding if an employee needs a few more days to provide information from a doctor because the doctor was on vacation = compassion.
- Failing to require documentation after the deadline given the employee has passed ≠ compassion.



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Balancing Compliance and Compassion

- Using the interactive process to find effective, reasonable accommodations for an employee = compassion.
- Allowing an employee to fail to meet expectations solely due to a disclosed disability ≠ compassion.



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Balancing Compliance and Compassion

- Providing an employee with clear expectations and guidance for communications and assurances of appropriate confidentiality = compassion.
- Failing to hold an employee to previously agreed upon expectations ≠ compassion.



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Managing Confidentiality and Communication

CONFIDENTIALITY

- ADA requirements for storing disability-related information.
- Need-to-Know Basis: Document who needs to know information in order to implement the accommodation(s) and why.
  - Supervisors
  - Schedulers
  - Potentially those with input regarding performance



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Managing Confidentiality and Communication

COMMUNICATION

- Have a plan to address inquiries or complaints from team members respectfully.
- Consider working with the employee on an agreed-upon line or description.
- Supervisor/management training.
- Create a culture of inclusivity.
- Focus on workflows and tasks, rather than underlying disability.



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Examples

You notice that Employee has been missing deadlines. Also, in observing Employee, you notice that she seems to be distracted in meetings and gets easily sidetracked by interruptions. You have a close family member with ADHD, and Employee's behavior seems consistent with the condition. You need to address the issue of missed deadlines with the Employee.



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Examples

Employee's direct supervisor advises you that Employee has been missing deadlines. Direct Supervisor tells you that he has a close family member with ADHD, and Employee's behavior seems consistent with the condition. You need to address the issue of missed deadlines with the Employee.



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Examples

You notice that Employee has been missing deadlines. You recall that at a past work social event, you were talking to Employee's coworker about your child's recent ADHD diagnosis. Coworker responded, "Yes, it is very common. In fact, Employee has ADHD and I'm sure she'd be happy to talk to you about it if you have any questions." You need to address the issue of missed deadlines with the Employee.



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Examples

On two separate occasions in the past six months, you happened to walk past Employee's office and saw that she was sleeping at her desk. You recall that at a past work social event, you were talking to Employee's coworker about an interesting documentary you recently watched about narcolepsy. Coworker responded, "Did you know that Employee has narcolepsy." You need to address the issue of falling asleep at work with the Employee.



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Key Takeaways

1. Main differences between physical and non-physical disabilities are that non-physical disabilities tend to be more difficult to identify, and the accommodations required for them may not be obvious.
2. If there is any doubt, ask for guidance from an appropriate healthcare professional.
3. If there is a basis for action based purely on conduct/performance and there is no known disability, consider taking action before a disability is disclosed.
4. Don't panic or shy away from the interactive process—the fundamentals for dealing with non-physical disabilities are the same as for physical disabilities.

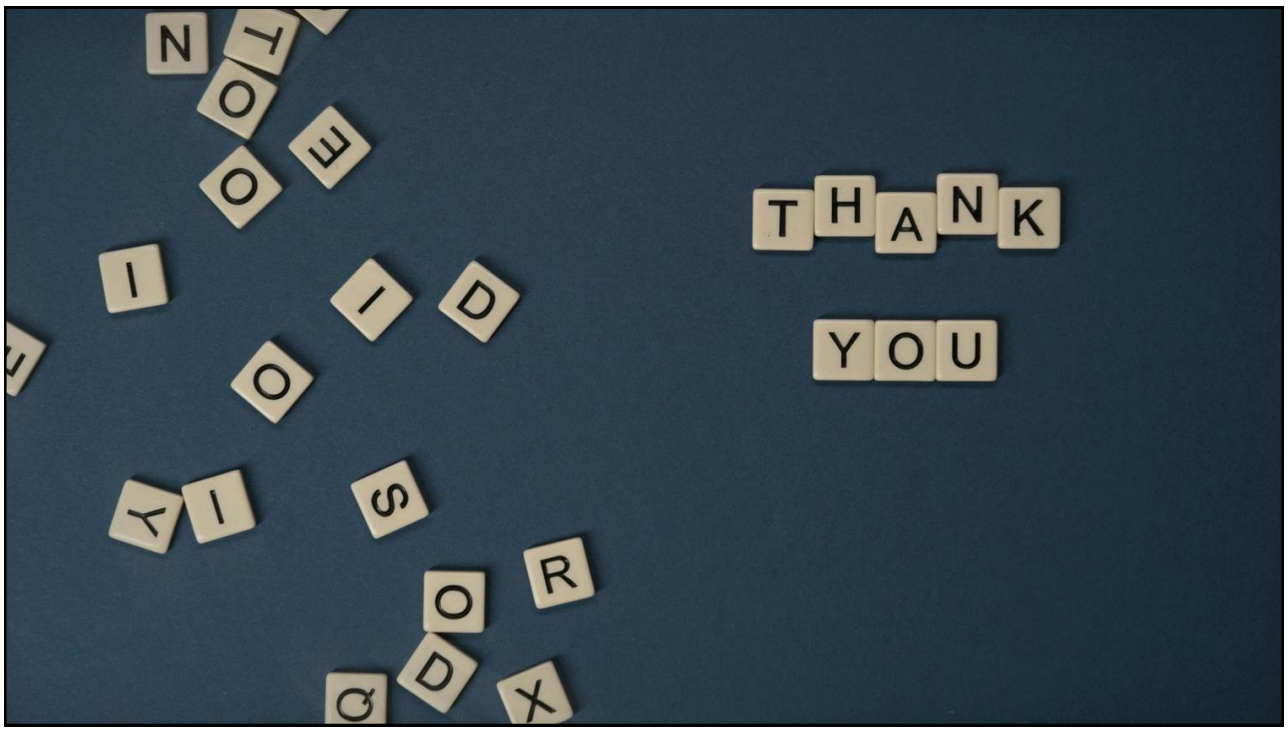


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