

Legal Implications of Mental Health in the Workplace

By Becky Zuschlag & Amy Angel

According to the National Alliance on Mental Illness, one in five adults in the United States experiences some form of mental illness each year, with one in 20 adults experiencing serious mental illness. In a recent report by Mental Health America, examining the prevalence of mental illness across the states, Oregon ranked 48th, making it one of the states with the highest prevalence of mental illness.

Numerous state and federal laws may be implicated when an employee discloses that they are suffering from a mental illness that is impacting their work. Disability accommodations, protected leave, and workers' compensation benefits are just some of the potential rights available to employees who have mental health conditions. Given the high prevalence of mental illness in Oregon, and the numerous legal protections available to employees, employers should be aware of their obligations under state and federal laws when an employee's mental illness impacts the workplace.

Disability Accommodations

The Americans with Disabilities Act ("ADA") applies to employers with 15 or more employees, while Oregon's disability laws apply to employers with six or more employees working in the state. Oregon's disability laws largely mirror the ADA and are interpreted in a manner consistent with the ADA. Worker protections provided by these laws apply to both employees and applicants for employment.

Under state and federal law, an individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activity, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. If an employee discloses that they have a mental illness that is impacting their ability to do their work, the employer must engage in an interactive process with the employee and may request relevant information from the employee's health care provider, including suggested reasonable accommodations.

If leave is determined to be a reasonable accommodation that best supports the employee, allowing them to perform the essential functions of their job upon their return to work, the employer should also consider its obligations under applicable leave laws.

Protected Leave

The Family and Medical Leave Act ("FMLA")

Employees with mental illness may be eligible for job-protected leave under FMLA, which provides eligible employees of covered employers (50 or more employees) with up to 12 weeks of protected leave each year for qualifying reasons. The FMLA protects leave for a variety of qualifying reasons, including a serious health condition that makes the employee unable to work. Physical and mental health conditions are considered serious health conditions under the FMLA if they require inpatient care or continuing treatment by a healthcare provider or are chronic conditions.

Serious mental health conditions that require continuing treatment by a healthcare provider include conditions that incapacitate an individual for more than three consecutive days and require ongoing medical treatment—either multiple appointments with a healthcare provider or a single appointment

with follow-up care; and chronic conditions that cause occasional periods when an individual is incapacitated and require treatment by a healthcare provider at least twice a year. Chronic conditions may include conditions like anxiety and depression.

To determine whether the employee's disclosed mental illness meets the FMLA's definition of a serious health condition, employers should request that the employee submit medical certification provided by their health care provider, supporting their need for leave.

Oregon Leave Laws

The Oregon Family Leave Act ("OFLA") largely mirrors FMLA, though it covers employers with 25 or more employees and applies only to Oregon employees who meet certain requirements. Like FMLA, OFLA generally provides eligible employees with up to 12 weeks of job-protected leave per year for, among other things, a serious health condition that renders an employee unable to perform at least one essential function of their job. OFLA also allows employers to require an employee to provide medical verification of their need for leave due to a serious health condition.

Oregon law also requires employers to provide employees with at least 40 hours of sick leave each year. Employees may use their sick leave for, among other things, their mental illness, their need for medical diagnosis or treatment of their mental illness, or for preventive medical care.

Beginning September 3, 2023, eligible employees may also qualify for benefits under Paid Leave Oregon when the employee's mental illness requires them to take medical leave. Check out our recent publications ([here](#) and [here](#)) on this new program for more information on how Paid Leave Oregon applies to your business.

Workers' Compensation

Oregon law includes mental disorders as a recognized injury for purposes of workers' compensation claims. Although claims related to mental illness are generally difficult for employees to prove, employers should proceed with their normal process for handling on-the-job injuries. This means, if an employee connects their mental illness with the workplace, provide an 801 form to the employee and let your workers' compensation insurer evaluate the employee's claim.

As we continue to see high instances of mental illness, employers should take a moment to ensure they understand their obligations under state and federal laws and know how to respond when an employee discloses their mental health condition.

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