Mental Health and the ADA: Facts, Myths and Some Secrets to Success

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The Americans with Disabilities Act prohibits discrimination against persons with a disability, which is defined as: a physical or mental impairment that substantially limits one or more major life activities. Section 3 of the ADAAA, 42 USC Section 12102 (1)(A). The ADAAA[1] makes it clear that major life activities include mental health.

In the definitions to the Act, major life activity includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, sanding, concentrating, thinking, communicating and working. It also includes the "operation of a major bodily function":

> (B) Major bodily functions
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> For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, **brain,** respiratory, circulatory, endocrine, and reproductive functions.

According to the National Institute of Mental Health (NAMI), about 18 percent of workers in the U.S. report having a mental health condition in any given month. This means that psychiatric disability is one of the more common types of disability covered under the ADA. NAMI offers the following additional statistics relating to the prevalence of mental health issues among adults in the United States:

- Overall, about 44 million adults (over age 18) in the U.S. report having had a mental health condition during the past year, representing about 18.5% of the U.S. population.

- Among these U.S. adults, the National Institute of Mental Health estimates that:
    - 18 percent have an anxiety disorder (including post-traumatic stress disorder, obsessive-compulsive disorder, panic disorder and generalized anxiety disorder)
    - 9.5 percent have depression
    - 4 percent have attention deficit/hyperactivity disorder
    - 2.6 percent have bipolar disorder
    - 1 percent have schizophrenia

[1] The Americans with Disabilities Act (ADA) was amended on September 25, 2008.

EEOC Statistics

During FY 2022, EEOC received a total of 73,485 Charges. Of that total, 25,004 charges involved claims under the Americans with Disabilities Act. These charges break down under issues as follows:

Total ADA Charges	25,004
Discharge	14,592
Reasonable Accommodation	11, 120
Harassment	5,424
Terms & conditions	5,124
Discipline	2,512
Constructive Discharge	2,308
Assignment	1, 182
Wages	1,023
Suspension	819
Demotion	578
Benefits	122

FY 2022 showed an increase in ADA charges over previous years: By comparison in FY 2021, the EEOC received 22,843 disability charges. In 2020, EEOC received 22,324 disability charges. In 2019, 24,238 ADA charges.

ADA Requires Reasonable Accommodation

The ADA requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship.

A reasonable accommodation is any modification or adjustment in the work environment or in the way things are customarily done that enables qualified individuals with disability to apply for a job, perform a job, or gain equal access to the benefits and privileges of a job. Possible accommodations include, but are not limited to, altered work schedules to allow for frequent breaks or to accommodate medical appointments, ergonomic office furniture, accrued paid and unpaid leave to obtain or recuperate from medical, telework, and reassignment. An employee may need the assistance of a job coach to help train the employee for the job. A reasonable accommodation may include permitting a service animal in a place where animals are typically not allowed, such as a cafeteria or a courtroom.

An employer does not have to remove any essential functions of an individual's job, allow an employee to do less work for the same amount of pay, or accept lower quality work as an accommodation.

To be entitled to a reasonable accommodation, the individual must have an actual disability or record of a disability. Employees who are regarded as disabled are not entitled to reasonable accommodations.

EEOC Litigation Cases

RESOLUTIONS

EEOC v. Peopleready Inc., et. al, Civil Action No. 1:21cv1098 (E.D.Va. Consent Decree 09/29/2021)

WASHINGTON DC -- In February 2022, TrueBlue, Inc. and PeopleReady, Inc., labor sourcing companies with offices across the United States, agreed to pay $125,000 and furnish significant equitable relief to resolve an ADA lawsuit filed by the EEOC.

The companies fired the Charging Party because of her psychiatric disability. Charging Party had anxiety and bipolar I disorder, which caused her to experience anxiety and episodes of mania psychosis and depression. She was limited in major life activities including thinking, concentrating, communicating, sleeping, interacting with others and brain function.

The Charging Party worked as a Marketing Recruiting Coordinator in the Manassas, Virginia office of TrueBlue's subsidiary, PeopleReady, and was responsible for responding to customer inquiries, attending job fairs, and recruiting, screening, and interviewing job candidates to fulfill customer staffing requests. On August 29, 2018, she was admitted to a psychiatric hospital. She was released to return to work by her physician on September 24, 2018 and came back into the office, where she told some of her co-workers that she had been diagnosed by bipolar disorder. Her assistant manager told her: "People in the office are uncomfortable working with you because of your condition." She continued to work.

In November 2018, she started experiencing symptoms of her bipolar disorder, including overwhelming anxiety. She asked and was allowed to leave on Nov. 8 and Nov. 9 because of her symptoms. Charging Party was disciplined for these disability related absences. No one talked to her about whether she needed reasonable accommodation. On Nov. 12, she was readmitted to the psychiatric hospital. Her boss told HR that the CP was "going to the looney bin."

CP and her physician completed the company's medical forms, and she was cleared to return to work Nov. 29, 2018. Her physician requested the reasonable accommodation of "ongoing leave of one to three hours, one to three times per month, to attend outpatient appointments." On Nov. 29, 2018, CP's supervisor asked HR: "Where do I stand with my problem child? Are we terminating her this week?" The CP was terminated on Nov. 29, 2018.

Consent Decree: In addition to providing the former employee $125,000 in monetary relief, the two-year Consent Decree settling the suit provides for programmatic relief intended to prevent further disability discrimination. The Consent Decree requires that the companies implement an ADA reasonable accommodation policy to ensure that they will undertake the necessary interactive process to consider requests for medical leave as reasonable accommodations. Under

the Consent Decree, the companies will also provide training on ADA compliance, with an emphasis on reasonable accommodations, and will provide periodic reports to the EEOC.

EEOC v. Anant Enterprises, LLC, Anant Operations, Inc. and Farnam Lodging LLC, Civil Action No. 8:22-cv-345 (DC Neb. Consent Decree 9/27/2022)

ST. LOUIS – In December 2023, the owners and operators of a hotel in Omaha, Nebraska, agreed to pay $100,000 to a former general manager, who was diagnosed with depression and was medicated for this condition.

The general manager worked at the Holiday Inn Express & Suites – Omaha Downtown, which is owned and operated by Anant Enterprises. Charging Party successfully performed the work of general manager. During most of his employment, the symptoms of his depression were adequately controlled by medication. In October 2019, the Charging Party was at home, and noticed that his depressive symptoms had worsened, and he began having strong feelings of anger, frustration, and thoughts of self-harm, without any apparent trigger.

The Charging Party asked his wife to take him to the hospital. He also called his direct supervisor, Anant's V.P. of Operations, and advised him that he was going to be away from work because he was going to the hospital for treatment for depression. Two days later, on the same day the general manager was discharged from the hospital, his supervisor told him he was fired because the company was afraid he might hurt other people.

Important to note:

- The employer did not ask the Charging Party for any type of medical release or seek any medical opinion regarding his ability to return to work after his hospitalization.
- The employer did not ask the Charging Party about his ability to return to work and perform the essential functions of his job after his hospitalization.
- The employer did not conduct any individualized assessment of the Charging Party's ability to perform the essential functions of his job with or without reasonable accommodation at the time of his discharge.

Consent Decree: In addition to paying the Charging Party $100,000 in backpay and compensatory damages, the Consent Decree prohibits Anant from terminating employees on the basis of disability, requires Anant to adopt policies and procedures to ensure compliance with the ADA, ensures all employees receive copies of and annual training on those ADA policies, and requires additional recurring ADA training for all of Anant's owners, general managers, and human resources personnel. Anant will also regularly report to the EEOC regarding any employees who are terminated after requesting an accommodation for a disability or taking leave for a disability.

EEOC v. Pivotal Home Solutions, Civil Action No. 21-cv-04978 (N.D. Ill Consent Decree 9/20/21)

CHICAGO – Pivotal Home Solutions, a home warranty company headquartered in Naperville, Illinois, will pay $175,000 and furnish other relief to settle a disability discrimination lawsuit brought by the EEOC.

The Charging Party worked at Pivotal Home Solutions as a dispatcher through a staffing agency for nearly six months. During that time, she succeeded in her role, received no negative performance evaluations, and was told that she would likely be hired to work directly for Pivotal instead of through the staffing agency. Prior to her employment with Pivotal, Charging Party had been diagnosed with post-traumatic stress disorder ("PTSD") and anxiety. For the Charging Party. PTSD and anxiety substantially limited a number of major life activities including emotional regulation, the function of her brain, eating, sleeping, breathing, and thinking.

In January 2018, the Charging Party disclosed to her supervisor that she had a panic attack and had been prescribed medication to treat her post-traumatic stress disorder and anxiety. Shortly thereafter, the supervisor contacted several representatives of the staffing company that placed the employee at Pivotal and requested that she be separated because of her "nervous breakdown." In two of the phone calls, documented by representatives of the staffing company, the supervisor indicated that the employee had no performance issues but that he wanted to separate her anyway because he believed that the environment was too stressful for her. At least one representative of the staffing company informed the supervisor of the risk of terminating an employee for a medical condition that did not affect her performance, but the supervisor continued to request that the employee be terminated.

Consent Decree: Under the 3-year Consent Decree, Pivotal agreed to pay $175,000 to the former employee for backpay and compensatory damages. Further, Pivotal is subject to an injunction forbidding it from discriminating against employees, including employees working for Pivotal through a staffing company, because of their disability. Pivotal is also subject to an injunction forbidding it from retaliating against employees for opposing any practice made unlawful under the ADA, filing a charge of discrimination under the ADA, testifying in any proceeding under the ADA, or for asserting any rights under the consent decree. Pivotal is also required to update its policies to prohibit discrimination under the ADA and to update the policies to state explicitly that they apply to employees working at Pivotal through staffing companies. In addition, Pivotal will provide annual trainings conducted by outside and independent trainers to managers and all employees responsible for human resources about their obligations under the ADA.

EEOC v. Sinclair Broadcast Group, Case No. 1:22-cv-02406 (M.D., Consent Decree 8/31/2023)

BALTIMORE – Sinclair Broadcast Group will pay $85,000 and provide other relief to settle a disability discrimination lawsuit filed by the EEOC.

Charging Party was a help desk technician who was diagnosed with schizoaffective disorder. She worked for Sinclair Broadcast Group at an office located in Cockeysville, Maryland. Before Sinclair learned of Charging Party's disability, the company praised her job performance. Before learning of the disability, Defendant did not issue Charging Party any warnings or counselings, did not initiate any disciplinary proceedings against her, and took no adverse employment action against her.

In January, she told her supervisor about her disability. One day later, the Human Resources Director called her and made inquiries about Charging Party's disability, medication, and medical history. The HR Director told Charging Party that she could not come back to work unless she submitted a doctor's note saying she could return. Charging Party provided the company with that doctor's note. Ten days later, Charging Party was terminated.

The 18-month Consent Decree settling the suit requires Sinclair Broadcast Group to pay $85,000 in back pay and compensatory damages, and to provide periodic reporting, monitoring, and a process for reviewing future disability discrimination complaints. The decree also requires Sinclair Broadcast Group to provide training to ensure compliance with the ADA, including anti-stigma training aimed at reducing stigmatizing behavior in the workplace and protecting those with mental impairments from harassment, degrading conduct and discrimination.

EEOC v. Hobby Lobby, Civil Action No. 22-cv-02258 (D.C Kan. Consent Decree 5/9/2023)

ST. LOUIS – Hobby Lobby Stores, Inc., a national arts and crafts retailer, will pay $50,000 to resolve a disability discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission.

Hobby Lobby violated the Americans with Disabilities Act (ADA) when it failed to allow a part-time clerk at its Olathe, Kansas store to use her service dog on the job as a reasonable accommodation for her disabilities, including anxiety, depression, and post-traumatic stress disorder (PTSD). The part-time clerk performed cashier duties and assisted in the seasonal, home accents, and floral departments, including stocking shelves and unloading and stocking merchandise on "truck day." When the clerk sought permission to bring her service dog to the store, the manager asked her to provide medical documentation to support her request, which she did, and she also provided information at the request of corporate human resources. The company's district manager and human resources decided, without any supporting evidence, the dog would present a safety issue, even though customers were permitted to bring service and pet dogs to the store. Hobby Lobby ultimately fired the clerk when she advised the company she could not work without her service dog.

The three-year consent decree requires Hobby Lobby to pay $50,000 in monetary damages to the former clerk and to adopt and maintain policies, enact procedures, and provide employee training to ensure future compliance with the ADA. Hobby Lobby must amend its policies to provide that service animals can be considered reasonable accommodations. The decree also requires Hobby Lobby to notify employees of their right to reasonable accommodation under the ADA and periodically report to the EEOC.

COMPLAINTS

EEOC v. Elaine's Pet Resort, LP et al., Civil Action No.: 1:23-at-00845 (E.D. Cal.)(Complaint 9/29/2023)

FRESNO, Calif. – Elaine's Pet Resort, LP and Elaine's Animal House Inc., which operates pet resorts in Fresno and Madera, California, violated federal law by failing to provide reasonable accommodation to a class of applicants and employees, EEOC charged in a lawsuit filed Sep. 29, 2023.

Beginning in 2021, Elaine's Pet failed to engage in the interactive process and provide a reasonable accommodation to a class of applicants and employees with disabilities whose post-offer drug tests came back positive. Defendant refused to hire any applicant who had positive results on their post-offer drug screening tests. The EEOC alleges that Elaine's Pet failed to engage in the interactive process that would have determined that the medication was legally prescribed and instead took negative employment actions against their applicants or employees.

In the Complaint, EEOC details what happened to Charging Party I and II. Charging Party I applied for Kennel Staff positions. He has Attention-Deficit/Hyperactivity Disorder ("ADHD"). He had a positive result on the drug screening test resulting from Adderall, a medication prescribed to him for ADHD. Defendants rescinded his job offer and failed to hire Charging Party I, rather than accommodating him by making an exception to their blanket policy. When Charging Party I called the General Manager to explain that he has ADHD, the General Manager stated to Charging Party I that she could not hire people with disabilities or have them around the dogs.

Charging Party II has depression, chronic anxiety disorder, chronic pain and past opioid addiction. She had a positive result on a post-offer drug screening test that was attributable to medications Xanax and Methadone that she was legally prescribed for her impairments. Rather than accommodating Charging Party II by making an exception to their blanket policy, Defendants terminated her, despite her satisfactory performance in the position. Charging Party offered to provide the company with a doctor's note. However, the General Manager and the guest services supervisor informed Charging Party II that Defendants have a zero-tolerance drug policy and whether her medications were prescribed did not impact Defendants' decision to terminate her employment.

EEOC v. Zoe Center for Pediatric and Adolescent Health, Civil Action No. 4:23-CV-00167-CDL (M.D. Ga. Complaint 9/26/2023)

ATLANTA – Zoe Center for Pediatric & Adolescent Health, LLC, a provider of pediatric and adolescent health services in Thomaston, Georgia, violated federal law when it denied an employee an accommodation for her disabilities and then fired her, EEOC charged in a lawsuit filed on Sept. 26, 2023.

Charging Party was a web designer and technical media specialist for the health care provider. She has mental impairments, including anxiety disorder, depression, and post-traumatic stress

disorder. Charging Party has an emotional support animal and was able to perform all of her duties remotely.

In January 2022, Charging Party had a flare-up in her symptoms. Charging Party requested to stay home and have access to her emotional support animal. She asked to work from home for one full week and then to return on a hybrid work schedule (MWF home, TTH office). In her request, Charging Party said that she was open to other alternatives. However, the day after her request, Zoe Center denied the employee's request for an accommodation and terminated her.

It's important to note:

- On previous occasions, CP had worked remotely when she had the flu and when the office was closed because of bad weather.

- Defendant's Human Resources Professional told the COO that Charging Party was requesting a reasonable accommodation and that terminating the Charging Party might be a violation of the ADA.

- Zoe Center did not ask Charging Party to provide additional information to support her accommodation request.

- Zoe Center denied Charging Party's accommodation request and did not propose any alternative accommodation or engage in any interactive process with her.

- Zoe Center has not articulated any undue hardship that Charging Party's requested accommodation would pose.