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PAPER

UNDERSTANDING PSYCHIATRIC DISABILITIES

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When it comes to employees with psychiatric disabilities, some human resource professionals want to know only what is absolutely necessary. That attitude is understandable, at least from the perspective of employment law. An employer is less likely to be accused of taking adverse action based on a psychiatric disability if decision makers in the organization have been told as little as possible about that disability. The HR professionals, so the argument goes, should stick to enforcing performance standards while avoiding attention to any psychiatric issues that might be causing performance shortfalls (Segal, 2001).

Moreover, what sensible person would choose to intentionally wade into the confusing crosscurrents created by the Americans with Disabilities Act (ADA) rules regarding psychiatric disabilities? There were so many questions that in March 1997, less than five years after the July 1992 implementation of the employment provisions of the ADA, the EEOC found it necessary to issue a lengthy guidance document offering clarifications regarding psychiatric disabilities (EEOC, 1997). Then about three years after that, the EEOC published a document which, among many other things, tells employers they won't be violating federal law if they ask troubled workers, "How are you?" (EEOC, 2000). With this amount of puzzlement, no wonder that for fiscal years 1992 through 2004, "psychiatric disabilities" constituted the largest category of ADA complaints for which the EEOC considered there to be merit (*Sharing the Dream*, 2000; EEOC, 2005).

At the same time, though, seen from a different perspective, the large number of legitimate employee complaints regarding psychiatric disabilities is a good argument for HR professionals to get more involved. If employers take a hands-off approach toward psychiatric disabilities, then misunderstandings and employee complaints are likely to brew. HR managers say, "We'll leave it to the medical evaluators and the employees themselves to tell us what accommodation we need to make." But the unfortunate result is that the employees become marginalized, considered a necessary burden rather than

being fully developed as a resource.

HR staff will legitimately feel constrained when the interactive process with the employee occurs in the absence of information about the nature of psychiatric disorders. Suspicions build that the workers are not doing all they can to relieve their problems or might just be using a claim of psychiatric disability to avoid a reprimand. Resentments grow around the idea that these employees are unnecessarily getting special privileges, such as quieter work areas and more flexible schedules. With the suspicions and resentments, the workers surely might be accommodated but not truly provided opportunities for maximum professional growth. The employees are cheated and so is the organization.

This certainly is a different approach from that taken toward cultural diversity. For decades, everybody in the organization has been urged to learn about how the experiences of different races and ethnicities impact the management of job performance. Much less frequently have HR decision makers been urged to learn about the implications of psychiatric problems and of the medications used to treat those problems.

The hands-off approach to psychiatric disabilities is wasteful. Because improvements in mental disorders over time are common, the specifics of what reasonable accommodations are needed are likely to change. This usually creates ways to save time, money and trouble for the organization. Unless HR tracks these changes and spots the prospects, resources are squandered. Administrative agencies charged with enforcing the ADA and related state laws, such as California's Fair Employment and Housing Act, talk about an interactive process. The word in that phrase is "process," not "event." Discussions about reasonable accommodation for psychiatric disabilities are to be ongoing.

There are some cases in which a mentally ill employee is capable of making only limited contributions and things probably won't improve substantially. The person with chronic Schizophrenia that is barely under medical control may do well just to show up for work most days. Hiring such people, along with keeping, at least for a time, an experienced and loyal employee who shows progressive psychiatric deterioration, are good deeds and a service to some greater good. However, those cases are the exceptions. Almost all employees with psychiatric impairments deserve to be coached to better performance and will show substantial improvements with proper management of their job behavior.

The ADA, additional laws and good management practice do set limits on information about employees' psychiatric disabilities (EEOC, 1997). Such information is to be kept separate from other personnel data and in a location secure from disclosure to those without a need to know. Unless the employee waives confidentiality or self-discloses a psychiatric condition, co-workers may not be told that the employee has been granted reasonable accommodation. With this in mind, there is a risk in HR staff knowing information related to psychiatric disabilities.

But balancing risks and resolving conflicting demands are stock-in-trade for HR

professionals. The truth is that a hands-off approach to psychiatric disabilities is not good performance management, which holds that the more relevant information you know about the people in your organization, the better job you can do.

It is not as if the ADA forbids HR managers and job supervisors from knowing general information about psychiatric diagnoses or even, in some cases, the diagnosis of a particular employee. As long as the information is job-related for the position in question and consistent with business necessity, managers and supervisors are explicitly allowed to take into account psychiatric issues behind a performance problem (EEOC, 2000).

Further, it is not as if most employees with psychiatric disorders oppose their supervisors and co-workers learning more about psychiatric impairments and psychotropic drugs. What these people oppose is the stigma, prejudice and ridicule that often accompany the diagnoses and the insensitivity to the difficulty in decisions about whether or not to brave the side effects of the psychotropic drugs. The more informed the organization--the better, most employees with psychiatric impairments would say (Mancuso, 1993).

Psychiatric Impairments on the Job

When aiming to understand psychiatric disabilities, a good start is to take note of three items. First, psychiatric diagnoses are made on the basis of limitations in functioning and a person's feelings of discomfort. That is different than with almost all physical disorders. If an employee breaks a leg, then that leg is considered broken regardless of whether it interferes with the employee's job performance and regardless of how much or how little pain the employee is suffering. However, mental health professionals will make a psychiatric diagnosis, such as Major Depressive Disorder, only if the symptoms include interference with daily life or result in the person being substantially distressed (American Psychiatric Association, 2000). To qualify as a psychiatric disability under the ADA, the disorder must substantially limit a major life activity (EEOC, 1997).

A second item to note is that true psychiatric disorders are more than just discomfort. HR staff might be too quick to say, "He should be able to just pull himself out of it." Yes, there are people who fake psychiatric disabilities. Yes, a determined attitude can overcome many of the symptoms. But the employee with a Bipolar Disorder, for example, probably can control the extreme ups and downs of mood only with effort and with medication. Co-workers and supervisors may see a quite normal appearance on the job most of the time, but that same person may be struggling mightily each night and every weekend and holiday in order to maintain the normal appearance on the job.

A third item to note is that with skilled psychotherapy and proper choices of medication, almost all psychiatric disorders will ease over time (American Psychiatric Association, 2000).

The two families of psychiatric disabilities HR staff are most likely to encounter are Mood Disorders and Anxiety Disorders.

Among the Mood Disorders are Major Depressive Disorder and Bipolar Disorder.

Major Depressive Disorder. *Norma's* supervisor realized her work performance had slowed down markedly over the past few months. When he asked her about it, Norma replied, "I'll take care of things. I know what's going on." Then, a few weeks later, Norma told the supervisor that she had been diagnosed for the first time in her life with a Major Depressive Disorder. She said she was on medication, but the doctor had told her the medication would take a month or so to start working fully.*

Norma asked for permission to leave her desk during the day, with an understanding that she would make up the time by staying late. HR formalized this as a reasonable accommodation and asked Norma's supervisor to arrange work assignments so that coverage was provided anytime Norma was gone.

When HR learned that co-workers were gossiping about often hearing Norma crying and talking to herself in a restroom stall, Norma was asked to consider some alternatives. Norma suggested that she be able to go to her car in the parking lot when she felt a need to cry. This involved coordination with the security guard at the front entrance.

After one month, Norma's performance returned to previous levels. However, she still would leave the office at times during the workday. Then a few months after this, she told the company disability coordinator that her medication was being changed. A meeting was held with Norma and her supervisor to arrange for the possibility that she would need additional accommodation in the weeks ahead. During this meeting, Norma made a request that surprised her supervisor and the HR staff member: Norma said it would mean a lot to her if her supervisor would stop by her desk each morning, "to start off my day with a few 'atta-girl's."

When an employee has a Major Depressive Disorder, the sadness, feelings of hopelessness, indecisiveness and fatigue usually slow down work performance. On top of this, work activities that previously brought the employee great pleasure may come to hold less interest, and the person often is overly critical of his or her own work. Employers can help by acknowledging the employee's legitimate accomplishments.

Bipolar Disorder. *It was no secret from the HR director that Carl* experienced Bipolar Disorder. Carl, a middle manager, had been with the company for nearly 20 years, and it seemed like once or twice in each of those years, Carl would "start bouncing off the walls," as the HR director put it. He'd get too energetic, too impulsive and too verbally aggressive.*

Some HR staff received consultation about the nature of Carl's disorder and the best ways to handle it. They learned that although Bipolar Disorder is the current name for what used to be called Manic-Depressive Disorder, Carl's type did not include depressive episodes, but only the swings between manic excitement and his usual enthusiastic ways.

Some years back, when Carl's direct supervisor complained to HR that Carl "goes into a rage when people try to slow him down," the HR director did meet with Carl and the supervisor to resolve the matter. Since then, each of Carl's subsequent supervisors was told by HR to firmly encourage Carl to focus on one part of a task whenever it was seen that he was getting overly scattered.

Although details of Carl's disorder were no secret from some HR staff and there had been a conscious effort not to discuss it with any other company personnel, the truth is that Carl's disturbing behavior ended up being no secret from most people in the company who had to deal with him. Even when he wasn't in the midst of a manic episode, he was the butt of jokes and called insulting nicknames outside his earshot. His own supervisor quipped, "Hey, I sort of look forward to those high-energy times. Carl's work output goes off the charts."

Carl vigorously complained to HR that he was being ridiculed. After considering a number of alternatives, HR decided to add a module to the diversity training in which common psychiatric disorders on the job were discussed. In addition, Carl's supervisor, a senior manager, worked toward creating an environment in which appropriate humor was encouraged and destructive humor discouraged throughout the company.

When a Bipolar Disorder includes depressive episodes, the changes between ups and downs might occur within the same day. But much more commonly, the manic, or high-energy, episode will last a few weeks or months and any depressive episodes will last a few months. In about half of the cases that have both manic and depressive episodes, there is a time of normal mood between the two.

Among the Anxiety Disorders are Panic Disorder and associated impairments; Obsessive-Compulsive Disorder; and Posttraumatic Stress Disorder.

Panic Disorder, Agoraphobia and Social Phobia. *Noreen's* psychiatric impairment came to the attention of Training & Development staff after she was recruited for a leadership development program. Noreen, who was an extraordinarily talented technical worker, had repeatedly turned down offers to participate in such programs. When a T&D staff member, a friend of Noreen's, pointedly asked her why, Noreen revealed that she could not tolerate traveling by airplane or being in "crowded" meetings, both of which would be required for participation in the program. The T&D staff member noticed how fearful Noreen appeared even talking about the possibility.*

Noreen said she did not want any special consideration, and she could handle her problems herself, as she'd done since she was a teenager. The T&D staff member urged Noreen to consider ways she might overcome the challenges so she could realize her full potential on the job and help out the organization. Noreen asked about the employee assistance program. The T&D staff member referred Noreen to a benefits counselor in HR. Eight months later, Noreen applied for the leadership development program and was accepted.

Employees with these sorts of anxiety disorders suffer episodes of physical agitation and fear of losing control. People with Agoraphobia are most likely to experience symptoms when in a situation where a quick exit would be difficult or embarrassing. Those with Social Phobia avoid meetings not primarily because of the physical surroundings, but rather because of concerns that others will judge them to be flawed. Such employees avoid leadership responsibilities even when they have the technical skills.

It is the incapacitating quality of the anxiety that distinguishes these disorders from just the nervousness most of us have when faced with giving a speech, for instance. Unless treated with skilled psychotherapy and medication, these anxiety disorders are likely to last a long time. Employers can support the psychotherapeutic work by gently prodding employees with these disorders to gradually introduce themselves to the feared situations.

Obsessive-Compulsive Disorder (OCD). *Eddie* is a warehouse worker whose job performance meets expectations. When a new supervisor, hired from outside the agency, took over the warehouse operation, the former supervisor told the new one that it was essential that Eddie be given all work instructions one day in advance. He could not be expected to receive shipments, stock the inventory or distribute supplies with same-day notice, for instance.*

The new supervisor considered this requirement burdensome. When he went to Eddie's work area to discuss it, the supervisor noticed how extremely cluttered the work area was. A few days later, the supervisor saw Eddie backing his car out of a parking space after work. The supervisor noticed the rear seat area was completely filled with neatly piled boxes.

Because of his concerns, Eddie's supervisor asked HR for assistance. The supervisor said he could not legitimately be expected to oversee the warehouse operation when he could not give one of his workers ongoing instructions. He went on to say that, considering what he'd seen in the back seat of Eddie's car, he wondered if his employee was stealing from the agency.

HR staff told the supervisor that Eddie had medical verification of a diagnosis of Obsessive-Compulsive Disorder, and one reasonable accommodation was that he be given all work assignments on a daily basis and at the end of the prior work day. In addition, Eddie was allowed to store whatever he wanted to in his work area, as long as it did not create a health or safety hazard.

The new supervisor then pointed out that his own performance appraisal as a probationary employee was likely to take into account the timeliness of handling requests to the warehouse. He asked that this performance appraisal recognize his inability to have one of his people respond promptly.

The supervisor asked what other workers thought of the special accommodations Eddie received. The HR manager answered, "At this point, they are probably tired of talking about the special arrangements, since all they get is an answer that we obey all laws and

we protect privacy. New employees might ask, though.

"We know that Eddie's behavior is a nuisance to his co-workers. He gets the essential tasks done, but with his rigidity, he doesn't always get the tasks done efficiently. I realize it will be frustrating for you not to be able to explain fully. Your people could see you as ineffective or just unwilling to handle a difficulty.

"Three things to keep in mind: First, these people probably know most of what's going on. The questions to you are to confirm details and tell you they'd like it to be different. Second, there is lots of information you are indeed able to give to the people you supervise, and that should build enough respect for you that they can let go of the issues with Eddie. Third, after you've been with the situation for a while, if you can make a case that Eddie can't adequately carry out the essential duties of the job, even with the accommodation we provide, let us know, since that is reason to consider putting Eddie into another job or even terminating his employment here.

"Also, be aware that Eddie has wanted much more than we're willing to give. There are times we've had to put our foot down about his messy work area, for instance. He swallowed real hard and then went for the trash barrel. Eddie wants his job. There's nothing wrong with him asking us for what he thinks will make his job more comfortable, but he is to understand that we will do only what is reasonable."

An employee with OCD compulsively repeats bothersome behaviors—not to seek pleasure, but instead in efforts to ease anxiety. Workers whose job performance is significantly impaired because they can not locate information in their pack-rat-nest offices or because they insist on carrying out tasks with complex, superstitious routines may be enduring OCD. This disorder is stubbornly stable over the years, even with psychotherapy, unless medication is used.

Posttraumatic Stress Disorder (PTSD). *The HR manager telephoned Jerrold's* supervisor to ask about complaints he had heard that Jerrold was a danger to other employees. In response, the supervisor said that Jerrold was having troubles fitting back in after returning from National Guard duty in a combat zone.*

"Now that he's back on the job, he's really nonstop tense. I don't see him as dangerous, but I can understand how other people might. He startles easily if anyone comes up behind him. A few days ago, he looked like he was going to grab somebody, and he gets angry and stalks off if anybody asks him about his war experience."

HR manager responded, "Tell people not to ask him about his war experience. That seems simple enough. I suspect that if he wants to talk about it, it won't be with his co-workers. None of this sounds like he is an active danger, though. What is really going on?"

"What happened is under people's skin. Because of USERRA, we had to kick out the woman who was handling Jerrold's job so Jerrold could have it back after being

completely gone for nearly two years. People really liked that woman. She didn't scare people like Jerrold is doing."

"How is his job productivity," asked the HR manager. Replied the supervisor, "It is picking right up. I have no complaints about that."

Following this conversation, the HR manager interviewed Jerrold, who agreed that he was having difficulties interacting with co-workers. When told that his supervisor was pleased with his productivity, Jerrold responded that he viewed his own job performance as poor.

He said that during his post-deployment processing, he was told he had an Acute Stress Disorder and might develop Posttraumatic Stress Disorder. Right after telling this to the HR manager, Jerrold volunteered that he was also having trouble fitting back into life with his wife and children. He said he'd been trying to get an appointment with a Veterans Administration doctor, but there was a long waiting time.

Jerrold was reminded of the psychotherapy provisions in his health coverage. He subsequently presented to HR documentation that he had PTSD. This resulted in a series of accommodations for Jerrold: moving his desk so he faced the entry door, placing a mirror on his desk so he could see people approaching and authorizing him to take work breaks when he felt it necessary. In addition, Jerrold's supervisor was counseled about ways to help fully reintegrate Jerrold into the workplace.

The productivity of an employee with PTSD is upset by experiences of painful emotions associated with traumatic events from the past. The trigger could be a workplace situation or maybe the employee's personal thoughts. The military estimates that one out of every six National Guard and military Reserve personnel returning to civilian employment will have a psychiatric disorder, principally PTSD (National Center for PTSD, 2004). Employees who have been victims of workplace violence or have witnessed the violence also can develop PTSD.

HR professionals also might be called on to understand the psychiatric impairments from the performance of employees with **Schizophrenia**.

A set of retail outlets, all in the same city and all under the same ownership, had an agreement with a community-based organization to provide job slots for people with Schizophrenia who had been stabilized on medication. The objective of the job placements was to progressively "harden" the employees to prepare them for competitive employment. The business received government funds for providing the placements, but also considered the program to be an important community service.

Norma had been assigned to work in one of the outlets. At the start of her employment, she would respond to stress by starting to talk to herself. She'd be reminded by co-workers that this could disturb others. Further along in her employment, Norma, who had been trained in accounting before her Schizophrenia, was able to handle rather*

complex bookkeeping assignments as long as each task was divided into components for her.

At one point, Norma stopped taking her medications because she didn't think she needed them. She slowly slipped back into psychosis and had to leave the job for six weeks. At another point, Norma's medication was changed to one that happened to have powerful side effects. During the changeover, she was asked not to come to work for one week. Aside from this, Norma's job attendance was almost perfect. She ended up being hired for a regular position with the local business.

Unless on proper medication and receiving psychotherapy, the schizophrenic employee usually experiences hallucinations and delusions. Hallucinations can include the employee hearing voices that are not really there. Delusions consist of mistaken beliefs, such as distorting what really happens to conclude that people are intent on harming or seducing him or her.

Hallucinations and delusions can frighten supervisors and co-workers. However, it is actually another set of symptoms that are potentially more disruptive to the work performance of the employee with Schizophrenia: Unless receiving proper treatment, these employees have trouble organizing their thoughts and carrying out tasks in a motivated, focused way. Schizophrenia often responds very well to medication. Still, many people with Schizophrenia resist taking medication as prescribed.

Psychotropic Drugs on the Job

Historically, the use of psychotropic drugs—medications to treat psychiatric impairments—has been controversial. Even many mental health professionals believe that psychotropic drugs are used too readily. Supporting this view is research that found that a popular form of verbal psychotherapy, called cognitive therapy, appeared to be more effective than the drug Paxil in treating people with Major Depressive Disorder (Lester, 2005).

Added to this, the side effects of psychotropic drugs are downright bothersome and occasionally dangerous. These side effects can disrupt job performance, and that is where it becomes of special interest to HR. "Why can't she just pull it together and do without the medication, or the mental problems, for that matter," a supervisor or manager might ask the HR staff. But in most cases, the real challenge is to encourage people with psychiatric impairments to take their medication. They don't like the side effects, which usually kick in a few weeks before the therapeutic effects do. They don't like having to admit each time a dose goes down that something is wrong with them. As soon as they can, they think about stopping their meds.

It is not up to HR or to an employee's supervisor whether that employee takes psychotropic medications. In fact, the EEOC cautions supervisors against monitoring if an employee takes prescribed medications or even asking what medications an employee takes. This would violate the ADA provisions regarding health inquiries (EEOC, 2000).

At the same time, though, employers are required by the ADA to accommodate not only a psychiatric disability, but also any need for reasonable work breaks to take the medication and reasonable ways of handling the side effects of the medications. Knowing the characteristics of psychotropic medications helps HR staff appreciate the logic, or lack of logic, in requests an employee makes for accommodation around taking the meds.

Antidepressants: These medications ease feelings of hopelessness. Most antidepressants are either SSRIs or tricyclics.

- **SSRIs** (Prozac, Luvox, Paxil, Zoloft, Celexa, Lexapro) are used to treat certain anxiety disorders, such as OCD, as well as depression. Many employees will feel more active when on an SSRI. In general, this is good for job performance. But if the increased activity level turns into restlessness and agitation that interfere with work, HR could recommend that the employee discuss this with the physician.

- **Tricyclics** (Elavil, Pamelor, Triptil, Norpramin, Anafranil, Tofranil, Surmontil, Sinequan) cause dry mouth and blurred vision in many people. Reasonable accommodations could range from allowing the employee easy access to a rest room to altering the job assignment.

Mood stabilizers: These medications (Eskalith, Tegretol, Trileptal, Depakote, Lamictal) ease the symptoms of Bipolar Disorder. In general, these have no bothersome on-the-job side effects. However, one problem with mood stabilizers is that people stop taking the meds because they miss the excitement of the manic episodes. Antidepressants and small doses of antipsychotic drugs are sometimes used to treat Bipolar Disorder. Each of these medications does have side effects that could require job accommodation.

Antianxiety medications: Most antianxiety medications (Valium, Librium, Klonopin, Ativan, Xanax, Halcion, BuSpar) cause drowsiness at the start. Therefore, if the employee uses machinery or drives vehicles, a reasonable accommodation probably should be a short-term change in work assignment. With certain people, there is a clear impairment in coordination, judgment and impulse control that lasts for a longer time, similar to what is seen with people drunk on alcohol. Halcion can cause a form of amnesia in which the person forgets what has happened in the recent past, after having taken the medication and lasting until the Halcion clears from the body. If an employee is using Halcion, it is helpful to have all instructions provided in writing as well as verbally and for the employee to be encouraged to take written notes in meetings.

Antipsychotics: Schizophrenia is a type of psychosis. The two major types of antipsychotic medications are the second generation and the traditional.

- **Second-generation antipsychotics** (Clozaril, Risperdal, Zyprexa, Seroquel, Geodon, Abilify) relieve hallucinations and delusions without interfering with motivated thought and action. Each of these powerful medications has its own profile of side effects and, therefore, its own list of likely accommodations. For example, during hot weather, employees taking Clozaril should work in a cool

location, avoid exercise and drink abundant amounts of water. All the second-generation antipsychotics are associated with restlessness and with an increased risk of fainting.

• Most people taking **traditional antipsychotics** (Thorazine, Vesprin, Mellaril, Serentil, Prolixin, Trilafon, Stelazine, Compazine, Loxitane, Haldol, Navane, Moban) find that their work pace and motivation are severely disrupted. To carry out the essential duties of the job, they probably will need tasks divided into small pieces and their output frequently monitored. These medications can cause muscle tremors and spasms, and the medications used to relieve the tremors and spasms (Artane, Cogentin, Benedryl) cause dry mouth and blurred vision.

When an employee with a chronic psychiatric disability begins work in an organization, chances are the medication routine will be stable and the employee is in a good position to discuss with HR any accommodations for the meds. At the other extreme, when an employee first develops a psychiatric disability while working for an organization, the employee might need to try out one medication after another as well as various combinations of medications before the employee and the mental health professionals find what works best. Each trial is likely to last from a few weeks to a few months, so side effects and therefore job accommodations could need to be changed repeatedly for a while.

"Direct Threat" From Psychiatric Disabilities

Since organizations are to employ, without prejudice, workers who have psychiatric disabilities, HR professionals might take comfort in the thought that all these workers are no more of a danger than are their colleagues who do not have psychiatric disabilities. Unfortunately, that comforting thought is wrong. Psychiatric disorders and the medications to treat those disorders can lower the threshold for dangerous behavior.

Any worker who is a direct threat may be excluded from employment without violating provisions of the ADA. However, the definition of "direct threat" is filled with enough branches to muddy those existing crosscurrents of the law: "A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation" (EEOC, 1997).

• **Significant risk:** An employee's yelling "I'm going to get that supervisor" may not qualify as a significant risk if the remark was made in passing during a time of particular frustration and there is no previous pattern of violent behavior from the employee.

• **Substantial harm:** The prospect of small damage would not seem to qualify as substantial harm.

• **Health or safety:** The direct threat provisions apply not just to safety, but also to health. If an employee carelessly handles toxic substances in ways that carry a

significant risk of substantial harm, the employee might be considered as presenting a direct threat.

• **Individual or others:** A worker who presents a significant risk of substantial harm to himself or herself but poses little danger of harming others can still be considered as constituting a direct threat.

• **Cannot be eliminated or reduced by reasonable accommodation:** What this means is that the employer could be required to collaborate with the employee in seeking ways to reduce the chances of the employee committing harm. That is a large responsibility to place on employers, especially if even a small reduction in the probability of mayhem restores the protections of ADA to a dangerous worker.

Whether or not an employee's behavior is considered to be a direct threat is subject to legal interpretation, so consultation with a suitably skilled attorney is essential.

Federal courts have held that evaluations of direct threat must be made by those with particular expertise (Echazabal v. Chevron, 2003). This recognizes that accurately assessing the degree of threat presented by a troubled employee can require sophisticated skills in interviewing the employee, gathering other information and analyzing the results.

All this leads to another important reason for working through legal counsel: If an organization contracts directly with a licensed mental health professional to conduct a "direct threat" assessment, the entire contents of that report could easily be subject to subpoena in a lawsuit. Because the mental health professional is not functioning as a psychotherapist to the employee in this situation, the protections of privileged communication may not hold. On the other hand, if the organization's legal counsel contracts with the mental health professional requesting an analysis of the facts relating to "direct threat," the report of that analysis is more likely to be protected under attorney-client privilege.

In many situations, an employee's immediate supervisor, with the guidance of HR staff, will be able to easily determine if the employee's actions in a particular situation constitute a direct threat. After all, skilled supervisors have had the opportunity to know their people well enough to recognize dangerous changes.

If HR staff are not confident about whether an employee's actions constitute a direct threat, they should seek professional help in assessing the situation. HR has a responsibility to the organization to protect against lawsuits. Beyond that, HR has an ethical obligation to the organization's people, including the person thought to be a threat, to protect them against harm to their health and safety.

Conclusion

There are good reasons why an HR professional would want to avoid knowing about psychiatric disabilities. Legal risks go along with knowing, so busy HR staffers can readily defend decisions to simply sign off on whatever accommodation the disabled employee and the employee's mental health specialist request. But the good reasons for mastering the fundamentals of psychiatric disabilities greatly outweigh the reasons for avoiding the knowledge. Only with that information can the HR professional fully evaluate the reasonableness of requests for accommodation and competently justify it if asking for an independent appraisal of the claimed psychiatric disability or the extent to which an employee constitutes a direct threat. A fundamental HR objective is to make best use of available resources. Understanding psychiatric disabilities clearly supports that objective.

* The name of the person is fictitious.

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Commission on Civil Rights.

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