

How to respond when employees show mental instability

A star employee tells you his new depression medicine makes it impossible for him to get to work on time. Must you alter his schedule? If an employee's mood changes suddenly, can you refer him or her to the employee assistance program (EAP)?

If you're not prepared to answer those kinds of questions, you should be.

The ADA requires employers to provide "reasonable accommodations" to employees and applicants with both mental and physical disabilities, as long as they're qualified to perform the job's essential functions.

Here are answers to five main mental-accommodation dilemmas faced by employers:

1. How do we handle a suddenly poor-performing employee if we suspect the cause is a mental disability?

An employer can inquire about an employee's potential mental disability if the inquiry is *job-related* and consistent with business necessity. The EEOC says you must have a "reasonable belief, based on objective evidence," that the employee's ability to perform essential job functions is impaired by a medical condition.

Before making an inquiry, the EEOC says you must first have some objective evidence that the deteriorating performance is related to a mental condition, such as knowledge the employee suffered a mental impairment in the past.

2. If we refer someone to our EAP, have we now "perceived" the person as being disabled?

Not necessarily. Courts in a number of jurisdictions have held that referral to an EAP does *not* establish conclusively that an employer regarded the referred employee as disabled (which would earn the employee ADA protection).

In most instances, the employer referred an employee to determine if the employee would constitute a direct threat to himself or others, or to determine whether the employee was fit to return to duty.

The safest course is to permit an employee who is performing at a satisfactory level to continue working while participating in the program.

3. What should we tell other employees about the accommodation?

Keep information on employees' medical conditions—including any mental disability—private. Maintain such information separate from general personnel files as a confidential medical record.

The EEOC recognizes that supervisors may need to learn about an employee's disability to provide an accommodation. But don't inform co-workers.

4. Do we have to tolerate misconduct by mentally disabled employees?

No. Most courts—and even the EEOC —agree that you can discipline employees with mental disabilities consistent with existing conduct rules. Mentally disabled employees can be held to the same job standards as all employees.

5. What's a 'reasonable' accommodation?

Employers must assess employees' requests for accommodations on a case-by-case basis, evaluating the preferred accommodation and, if warranted, suggesting alternatives. This exchange is the "interactive process" envisioned by the EEOC and is expected in any accommodations case.

For people with mental disabilities, you can consider modified work schedules, time off (both paid and unpaid), room dividers, minimizing distractions, offering instructions in a variety of formats and modifying workplace policies.

One common accommodation for employees with mental disabilities is work-schedule modifications, such as permitting an employee to start work later. Schedule-modifications often are reasonable accommodations to counter the effects of medication taken by employees with mental disabilities. Again, each situation should be decided on a case-by-case basis.

Online Resources: EEOC guidance on psychiatric disabilities

For more advice on what is considered a mental impairment, plus accommodation advice, download the EEOC's *Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities*. Go to **www.eeoc.gov/policy/docs/psych.html**.