

How to properly terminate an employee with mental health issues



Since firing an employee with a mental health condition can be costly if you violate their rights, it's crucial that you ensure you're doing so by the book. This includes providing objective evidence that the employee cannot perform their job duty or represents a safety risk to themselves or others.

With mental illnesses impacting [1 in 5 adults in America](#), you will likely have employees in your company living with various mental health conditions. The Americans With Disabilities Act (ADA), amongst other laws, is designed to protect those living with disabilities in school, the community, and the workplace. Many mental health issues are considered disabilities and therefore protected under the ADA.

That impacts you as an employer when it comes to terminating an employee diagnosed with a mental health condition. You'll want to ensure you're complying with ADA laws and others designed to protect such employees.

Failing to comply with these laws can be costly for your company as you could be held liable in a lawsuit. As a member of Human Resources, when you consider terminating an employee with a mental health condition, be sure to consider the key factors at play to ensure you're doing so legally.

Why firing an employee with a mental health issue is different

There are laws to protect employees with mental health problems, not from being fired at all, but from being terminated because of their disability.

The mental health conditions that are likely to be protected under the ADA include, but are not limited to:

- Major depression
- Post-traumatic stress disorder (PTSD)
- Anxiety disorder
- Bipolar disorder
- Schizophrenia
- Obsessive-compulsive disorder

Also, conditions don't necessarily have to be significant or permanent to qualify for protection.

According to the Equal Employment Opportunity Commission(EEOC), the process and reasoning for firing an employee at an organization should be the same for all, not different due to their mental condition. When employees with a disability are fired based on something other than their performance or the value they bring to the company, their rights are violated.

How does the ADA impact terminating an employee with mental health issues?

As mentioned previously, the Americans with Disabilities Act protects employees from disability discrimination within the workplace and in other areas of their life.

It has two duties. The first is prohibiting differential treatment of disabled employees. The second is requiring reasonable accommodations for disabled employees to perform the functions of their position unless it would impose an undue hardship on the employer.

That means as the employer you can't fire an employee with a disclosed mental illness because:

- The mental health condition limits their major life activities.
- The employee has a history of a disability or is believed to have one.
- The employee has a record of having a disability.

According to the ADA, your employees must be qualified to perform their job with or without reasonable accommodation. However, you can't discriminate against them or fire them solely because of their disability.

How to appropriately fire an employee with a mental illness

Since firing an employee with a mental health condition can be costly if you violate their rights, it's crucial that you ensure you're doing so by the book. This includes providing objective evidence that the employee cannot perform their job duty or represents a safety risk to themselves or others.

- **Ensure your company follows ADA regulations.** The Americans with Disabilities Act covers employers who engage in interstate activity and employ 15+ people at least 20 weeks of the calendar year.
- **Confirm the employee is considered disabled under ADA guidelines.** Not all mental conditions are covered under the ADA, so do your due diligence to ensure the employee has a covered disability. Also, disabilities that aren't disclosed don't count. If the employee fails to disclose their condition, it's not protected under the ADA.
- **Determine whether the employee is qualified to do their job.** You can legally terminate employees with disabilities if they don't have the skillset to perform the job's functions with or without reasonable accommodation. If you recognize they don't have the skill to complete their job with or without accommodation, you can move forward in the termination process.
- **Consider other job-related requirements.** Beyond your employees' skill-related job duties, consider other job requirements such as attendance and professional standards. However, keep in mind that some

of their typical job requirements might be protected under the ADA with the employee needing reasonable accommodation. On the other hand, you're not required to expect lesser quality work because an employee has a disability — that's not considered an accommodation.

- **Are reasonable accommodations in place?** Under the ADA, employees with disabilities should receive reasonable accommodations, including any change that helps an employee have equal employment opportunities. Employees should request an accommodation, and it's considered appropriate if it doesn't cause undue hardship to you as the employer.
- **Is the accommodation or lack thereof documented in writing?** While not required, it's a good practice to document accommodations that are in place or, if it's denied, to document the requested accommodation and why you denied it.
- **Provide feedback.** You should regularly provide honest feedback on their performance, so there's both open communication and a record of their performance. This is a best practice for all employees and is even more important for those with mental health conditions. Frequent feedback helps everyone be successful in their role. When you start to believe an employee might need to be terminated, this is especially important. You'll want a paper trail that documents performance issues and timely feedback to the employee.
- **Termination documentation.** With all of the above steps in place, once you realize an employee might need to be terminated down the road, you want to start developing a paper trail to document you did it legitimately. Your documentation should include violations, disciplinary actions, dates, times, places, and witnesses, if applicable. The more detailed documentation, the better.

Potential legal ramifications

Even if you do everything as you should, it's still possible for an employee to file a discrimination claim if they feel there has been an unfair dismissal. They have between 180-300 days to file their grievance, and the EEOC conducts investigations.

That's why you want to go through the points listed above to ensure you have everything in order related to the ADA, accommodations, and documentation. If there is ever a court hearing and you don't have your documents in place, it'll be more challenging to prove you didn't fire them because of their disability.