



Guidelines for Leaders

Now that your organization has made a commitment to reduce the stigma of Mental Illness, it is time to encourage open conversations and educate your employees on the topic. We encourage you to first meet with your Human Resources Department to discuss the campaign and policies specific to your organization. Additionally, as an organization, you should review your Employee Assistance Program, if applicable. We have included resources, laws and best practices for supporting staff in your organization struggling with mental illness.

This resource outlines an employers obligations under the **Americans with Disabilities Act** for applicants and employees who are experiencing mental illness. This is not intended to be legal advice. Employers are encouraged to contact legal counsel for advice regarding individual cases.

The information included was collected from the [ADA website](#).

Protection Against Discrimination

The **Americans with Disabilities Act (ADA)** is a federal law that prohibits discrimination against job applicants and employees with disabilities. The ADA applies to private employers with 15 or more employees, state and local governments, labor organizations, employment agencies, and management committees.

To qualify for protections under the ADA, the law states that you must be able to show:

- **That you have a disability that substantially impairs one or more major life activities.** This means that you must be able to show that you have a condition that, if left untreated, interferes with daily or work activities such as concentrating, communicating or regulating emotions.
- **That you are able to perform the essential functions of your job with or without reasonable accommodations.** In other words, you must be able to show that you can complete the important tasks or core duties of any job that you apply for.

While it does not apply to the federal government, discrimination by the federal government or federally assisted programs is barred under Title V of the Rehabilitation Act of 1973.

The **Rehabilitation Act of 1973 (Rehab Act)** is a federal law, similar to the ADA, that applies to any agency or group that receives federal funding, including public schools, universities and even some private schools. This law protects federal government workers and employees at any of these agencies from disability discrimination.

The **Family and Medical Leave Act (FMLA)** may help establish benefits as well. FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family or medical reasons. Eligible employees may take up to 12 work weeks of leave in a 12 month period for a number of reasons, including a health condition that makes the employee unable to perform the essential functions of their job.

Employees are eligible for FMLA if they:

- Work for a covered employer
- Have worked for the employer for 12 months
- Have at least 1,250 hours of service in a 12 month period
- Work at a location where employer has at least 50 employees

Many states also have laws that protect employees from discrimination in the workplace.

For more information about FMLA eligibility, visit [dol.gov/whd/fmla](https://www.dol.gov/whd/fmla)

ADA Guidelines

Mental Illness Defined Under the ADA

The ADA protects people who meet one of three definitions. They must have:

- (1) a physical or mental impairment that substantially limits one or more major life activities
- (2) a history of such a disability, or if an employer believes that you have one, even if you don't
- (3) a record of, or being regarded as, having such an impairment.

To be protected from job discrimination by the ADA, however, the person must also be qualified to perform the essential duties of the job, with or without reasonable accommodation. The ADA defines a mental impairment as "any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." Mental and emotional processes such as thinking, concentrating, and interacting with others are also covered under the Equal Employment Opportunity Commission (EEOC).

The ADA and Psychiatric Disability in the Workplace

Definitions:

The ADA defines disability as *a physical or mental impairment that substantially limits one or more major life activities*. When job applicants or employees have a mental health condition that meets this criteria, they have workplace rights under the ADA. The ADA Amendments Act of 2008 (ADAAA) recently broadened the definition of disability to provide legal protections against employment discrimination for more individuals with disabilities, including people with psychiatric disabilities.

Record of psychiatric disability

The ADA also prohibits discrimination against individuals who have a record or history of a psychiatric disability or are regarded as having a psychiatric disability. This means, for example, that qualified individuals who have a history of psychiatric disability cannot be discriminated against just because of that history. Also, employers can't take actions (such as failing to hire, demoting or denying training opportunities) because they believe a qualified applicant or employee might have a psychiatric disability.

Rights under the ADA

Applicants and employees with psychiatric disabilities have two main rights under the ADA. First, they have a right to privacy. Except when asking for an accommodation, they can choose whether or not to tell the employer about their disability. Second, they have a right to a job accommodation unless this causes undue hardship for the employer.

Resources

[ADA Information & Technical Assistance - U.S. Department of Justice \(DOJ\)](#) *Web: ada.gov*

[Equal Employment Opportunity Commission \(EEOC\)](#) *Web: eeoc.gov*

[Federal Communications Commission \(FCC\) - Disability Rights Office](#) *Web: fcc.gov/general/disability-rights-office*

[Office of Disability Employment Policy \(ODEP\)](#) *Web: dol.gov/odep/*

[The Family and Medical Leave Act \(FMLA\)](#) *Web: dol.gov/whd/fmla/*

Frequently Asked Questions by Employees

1. Is my employer allowed to fire me because I have a mental health condition?

No. It is **illegal** for an employer to discriminate against you simply because you have a mental health condition. This includes firing you, rejecting you for a job or promotion, or forcing you to take leave.

An employer doesn't have to hire or keep people in jobs they can't perform, or employ people who pose a "direct threat" to safety (a significant risk of substantial harm to self or others). But an employer cannot rely on myths or stereotypes about your mental health condition when deciding whether you can perform a job or whether you pose a safety risk. Before an employer can reject you for a job based on your condition, it must have *objective* evidence that you can't perform your job duties, or that you would create a significant safety risk, *even with a reasonable accommodation* (see Question 3).

2. Am I allowed to keep my condition private?

In most situations, you can keep your condition private. An employer is only allowed to ask medical questions (including questions about mental health) in four situations:

- When you ask for a reasonable accommodation (see Question 3).
- After it has made you a job offer, but before employment begins, as long as everyone entering the same job category is asked the same questions.
- When it is engaging in affirmative action for people with disabilities (such as an employer tracking the disability status of its applicant pool in order to assess its recruitment and hiring efforts, or a public sector employer considering whether special hiring rules may apply), in which case you may choose whether to respond.
- On the job, when there is objective evidence that you may be unable to do your job or that you may pose a safety risk because of your condition.

You also may need to discuss your condition to establish eligibility for benefits under other laws, such as the FMLA. If you do talk about your condition, the employer cannot discriminate against you and it must keep the information confidential, even from co-workers. However, if you wish to discuss your condition with coworkers, you may choose to do so.

3. What if my mental health condition could affect my job performance?

You may have a legal right to a reasonable accommodation that would help you do your job. A reasonable accommodation is some type of change in the way things are normally done at work. See list on the following page for examples.

You can get a reasonable accommodation for any mental health condition that would, if left untreated, substantially limit your ability to concentrate, interact with others, communicate, eat, sleep, care for yourself, regulate your thoughts or emotions, or do any other "major life activity." You do not need to actually stop treatment to get the accommodation.

Your condition does not need to be permanent or severe to be "substantially limiting."

It may qualify by, for example, making activities more difficult, uncomfortable, or time-consuming to perform compared to the way that most people perform them. If your symptoms come and go, what matters is how limiting they would be when the symptoms are present. Mental health conditions like major depression, post-traumatic stress disorder (PTSD), bipolar disorder, schizophrenia, and obsessive compulsive disorder (OCD) should easily qualify, and many others will qualify as well.

Accommodations At Work

While you must be able to perform the essential tasks of your job, you are entitled to reasonable accommodations that will help increase and maintain your job performance. Examples of some possible job accommodations include:

- Flexible work schedules or start times
- Reduced distractions or noise in the work area
- Working from home or telecommuting.
- Written directions and task lists
- Regular written or verbal feedback
- Flexible break schedule
- Private, quiet space to rest during a break.
- Use of a job coach

4. What if there's no way I can do my regular job, even with an accommodation?

If you can't perform all the essential functions of your job to normal standards and have no paid leave available, you still may be entitled to unpaid leave as a reasonable accommodation, if that leave will help you get to a point where you can perform those functions. You may also qualify for leave under the Family and Medical Leave Act, which is enforced by the United States Department of Labor. More information about this law and determining your eligibility can be found at www.dol.gov/whd/fmla.

If you are permanently unable to do your regular job, you may ask your employer to reassign you to a job that you can do as a reasonable accommodation, if one is available. More information on reasonable accommodations in employment, including reassignment, is available [here](#).

5. What should I do if I think that my rights have been violated?

The Equal Employment Opportunity Commission (EEOC) can help you decide what to do next, and conduct an investigation if you decide to file a charge of discrimination. Because you must file a charge within 180 days of the alleged violation in order to take further legal action, or 300 days if the employer is also covered by a state or local employment discrimination law, it is best to begin the process early. *It is illegal for your employer to retaliate against you.*

Filing a Complaint

Have You Experienced Discrimination?

If you feel like you have been discriminated against because you live with mental illness, there are a variety of legal options available:

- **Filing a Complaint with the Equal Employment Opportunity Commission (EEOC).** The EEOC is the federal government agency that enforces the ADA. If the employer is covered by the ADA, you can [file a complaint](#) with EEOC.
- **Federal Government Agency: Filing a Complaint with the Equal Employment Opportunity Office (EEO).** If the employer was a federal government agency, you must [file a complaint](#) with the agency's EEO Office. **For contacting the EEOC or filing a charge.** For more information, visit <http://www.eeoc.gov>, call 800-669-4000
- **Filing a complaint with a State Fair Employment Practice Agency.** Many states have laws that are similar to the ADA or the Rehab Act. These laws are enforced by the state's Fair Employment Practice Agency (FEPA). If your state has one of these laws, you should [file a complaint](#) at your local FEPA.
- If you are denied FMLA, contact the [Department of Labor](#) to file a complaint.