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OPINION

# Today's Business: Discrimination claims based on mental health rising

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Gary Phelan; Contributed photo

As Kevin Berling's birthday was approaching, he asked his employer not to celebrate his birthday because it might trigger a panic attack due to his anxiety disorder. After the employee who planned office birthday parties forgot about his request, the birthday party went forward and Berling did suffer a panic attack.

Berling went to his car, ate lunch and told his manager by text that he was upset his request was ignored. He was confronted and criticized the following day — and had another panic attack. Three days later, Berling was terminated. Last month, a jury awarded him \$450,000 for his disability discrimination claim.

Berling is one of the escalating number of employees claiming workplace discrimination based on mental health. About 30 percent of claims filed with the federal Equal Employment Opportunity Commission in fiscal 2021 involved mental health-related claims. EEOC Commissioner Andrea Lucas recently said that claims related to mental health “are going to start to explode into the public's sight soon.”

The COVID-19 pandemic may be among the reasons for the increase in the last two years. The EEOC observed that “employees with certain pre-existing mental

health conditions, for example, anxiety disorder, obsessive-compulsive disorder or post-traumatic stress disorder ... may have more difficulty handling the disruption to daily life that has accompanied the COVID-19 pandemic.”

Specifically, anxiety and PTSD account for most of the federal mental health claims filed in 2021. The other mental health conditions include depression, bipolar disorder, schizophrenia and cumulative trauma disorder.

There is no federal list of medical conditions which meet the statute’s definition of disability. Rather, the condition must substantially limit a major life activity. Connecticut defines it more broadly, covering persons with a present or past history of mental disability.

If the employee’s mental health impairment may be covered under federal or Connecticut statute, the employer might be required to provide the employee with a reasonable accommodation. There are a wide range of possible accommodations based on the employee’s needs, such as permitting remote work, flexible scheduling, providing a leave of absence or providing a private workspace. Nevertheless, employers should not assume there is a need for an accommodation. An employer generally will not be required to accommodate an employee’s mental health impairment unless his or her medical condition is disclosed with a request for some kind of adjustment or assistance as an accommodation.

The COVID-19 pandemic is not the only catalyst for the increase in claims. Today, there is much greater awareness about the mental health challenges faced by employees. The stigma based on mental health has steadily declined — particularly among younger employees. As a result, more employees who in the past would have remained silent now are more willing to talk about their mental health challenges.

A variety of resources are available to employers. At the top of the list is the federal Job Accommodation Network. For example, JAN suggests that employers consider the following questions when seeking to accommodate those with mental health conditions.

1. What limitations is the employee experiencing?

2. How do these limitations affect the employee and job performance?
3. What job tasks are problematic?
4. What accommodations are available to reduce or eliminate these problems?
5. Once accommodations are in place, would it be useful to meet with the employee to evaluate the effectiveness of accommodations and determine if others are needed?
6. Do supervisory personnel and employees need training?

As May's Mental Health Awareness month comes to a close, employers have an opportunity to invest in their employees. That investment will not just pay benefits for the one in five workers who navigate mental health challenges, it also will enable them to increase employee engagement, reduce turnover, reduce employee burnout and increase job satisfaction.

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