

## HR CLINIC

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### Many Employees Have Anxiety and Depression Issues, What Are Their Employer's Obligations?

Employers must be careful when it comes to employees who suffer from anxiety and depression. Often these disabilities have not received an official diagnosis and may not even be fully realized by the employee who suffers from either. An employer cannot discriminate against an employee because of a mental health condition. Discrimination includes all terms and conditions of employment such as hiring, firing, promotion, training and any other provision associated with employment. Employees with mental health issues also cannot be subjected to any form of harassment in the workplace.

Interestingly, 72 percent of people self-report that regular stress and anxiety interferes with their working lives, at least moderately, according to an Anxiety Disorders Association of America study. It also found that only 9 percent of the same group have been officially diagnosed.

Employees suffering from mental health issues are covered by privacy rights in the workplace. Employers can only ask medical questions of an employee in the cases noted below under Equal Employment Opportunity Commission (EEOC) rules. They can ask questions if the employee requests a reasonable accommodation but may only ask candidates medical questions after an offer of employment has been made (and before employment begins), provided any medical questions are consistent for all candidates for the same position.

Employers can ask medical questions when the company is engaging in affirmative action for people who have disabilities. That said, the employee has a right to choose whether to respond.

Where there is objective evidence that an employee is not capable of doing the job or it appears the employee poses a safety risk due to disability, the employer is entitled to ask medical questions.

An employer must do what it can to accommodate an employee's mental health disability. A reasonable accommodation is one that allows a disabled employee to perform essential job functions. Changing the way by which a job is typically performed is, by definition, providing an accommodation to the employee or applicant. Some possible

accommodations for someone who suffers from a mental health disorder are job reassignment to a less stressful situation/environment, allowing the employee to telecommute (if they can successfully complete job duties), or even allowing the employee to take an extended amount of time off, potentially under the FMLA (or any other leave that provides employee job protection).

There are additional things companies can do to create a work environment that can help those with anxiety function at a high level. Firstly, it is important to make employees aware of applicable benefits, such as an employee assistance program, if provided. Also, many insurance plans provide online resources for mental health issues the employee may access.

However, it should be said that employers are not required to tolerate employees' poor behavior at work, or failure to perform their jobs at an acceptable level. Disciplinary actions may be taken against an employee with known disabilities, mental health or otherwise, provided the employer can show that the discipline was taken without regard for the disability. Further, according to EEOC guidelines, employers are not required to provide accommodations that create an undue hardship on the employer.

The EEOC has a webpage that specifically addresses an employee's legal rights when they suffer from depression, PTSD and other mental health conditions. The webpage can be found at: [https://www.eeoc.gov/eeoc/publications/mental\\_health.cfm](https://www.eeoc.gov/eeoc/publications/mental_health.cfm)