

# OPEN SOURCING MENTAL ILLNESS

## Mental Health in Tech: Guidelines for Employees



## Mental Health in Tech: Guidelines for Employees

### Americans with Disabilities Act

#### **\*CHEAT SHEET\***

#### What is the ADA?

Title I of the Americans with Disabilities Act of 1990 prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.

#### Does my employer have to comply with the ADA?

Only employers with 15 or more employees. State and local government employers must also comply with the ADA. Federal executive agencies are exempt from the ADA, but they have to comply with the Rehabilitation Act of 1973, which is almost identical to the ADA.

#### How do I know if I have rights under the ADA?

Title I protects qualified employees with disabilities.

The definition of disability includes:

- (1) a person who has a physical or mental impairment that substantially limits one or more major life activities,
- (2) a person with a record of a physical or mental impairment that substantially limits one or more major life activities, and
- (3) a person who is regarded as having a physical or mental impairment that substantially limits one or more major life activities.

#### What is a “Mental Impairment”?

A substantial impairment in a major life activity that would substantially limit that major life activity.

Major life activities that can be impaired by a mental impairment include but are not limited to

- thinking
- concentrating
- interacting with others

#### How do I know when to request an accommodation?

You can request an accommodation at any time during the application process or while you are employed. You can request an accommodation even if you did not ask for one when applying for a job or after receiving a job offer. In general, you should request an accommodation when you know that there is a workplace barrier that is preventing you, due to a disability, from competing for a job, performing a job, or gaining equal access to a benefit of employment like an employee lunch room or employee parking. As a practical

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matter, it is better to request an accommodation before your job performance suffers or conduct problems occur because employers do not have to rescind discipline that occurred before they knew about your disability.

### How do I request an accommodation?

According to the EEOC, you only have to let your employer know that you need an adjustment or change at work for a reason related to a medical condition. You can use "plain English" to make your request and you do not have to mention the ADA or use the phrase "reasonable accommodation."

Requests for reasonable accommodation do not have to be in writing so you can request accommodations in a face-to-face conversation or using any other method of communication. Your employer may choose to write a memo or letter confirming your request or may ask you to fill out a form or submit the request in written form, but employer cannot ignore your initial request. However, you may want to put your request in writing even if your employer does not require it. Sometimes it is useful to have a paper trail in case there is a dispute about whether or when you requested accommodation.

### Do I have to tell my employer that I have a disability?

Under the ADA, employers are only required to provide accommodations for employees who are experiencing workplace problems because of a disability. Therefore, unless you let your employer know that you have a disability, the employer is not obligated to consider accommodations under the ADA.

### How much medical information do I have to provide to my employer?

Some employees do not want to give their employers a lot of details about their disability. If you prefer not to give a lot of information, you may want to limit the medical information you initially give to your employer when you request an accommodation. For example, you may want to tell your employer what you are having trouble doing, that the problem is related to a disability, and what your accommodation ideas are. Some employers will not ask for more information. However, employers have the right to request additional medical information when an employee requests an accommodation and if you do not provide it, the employer can deny your accommodation request. When an employee requests an accommodation and the disability or need for accommodation is not obvious, an employer may require that the employee provide medical documentation to establish that the employee has an ADA disability and needs the requested accommodation.

### What accommodations can I request?

In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. Under the ADA, employers are required to provide "reasonable" accommodations for employees with disabilities. Therefore, you can request any accommodation that is considered "reasonable."

Here are some examples of reasonable accommodations from the EEOC:

- making existing facilities accessible

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- job restructuring
- part-time or modified work schedules
- acquiring or modifying equipment
- changing tests, training materials, or policies
- providing qualified readers or interpreters
- reassignment to a vacant position
- medical leave
- work at home

Note: While employers are not required to eliminate an essential function, lower a production standard, or provide personal use items, they can do so if they wish. The only limitation on an employer's obligation to provide reasonable accommodations is that no such change or modification is required if it would cause "undue hardship" to the employer. "Undue hardship" means significant difficulty or expense and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business. An employer must assess on a case-by-case basis whether a particular reasonable accommodation would cause undue hardship.

**For more information visit:** <http://www.eeoc.gov/employees/> **or contact:**

### **Equal Employment Opportunity Commission**

info@eeoc.gov

P.O. Box 7033

Lawrence, Kansas 66044

(800) 669-4000 (Voice), (800) 669-6820 (TDD)

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**Purpose:** The following handbook consists of compiled guidelines for employees to reference when considering legal rights as an individual with a mental health impairment, including direction from the Equal Employment Opportunity Commission (EEOC) regarding the Americans with Disabilities Act (ADA).

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### Section I: The Americans with Disabilities Act - Your Employment Rights as an Individual with a Disability

The Americans with Disabilities Act of 1990 (ADA) makes it unlawful to discriminate in employment against a qualified individual with a disability. The ADA also outlaws discrimination against individuals with disabilities in State and local government services, public accommodations, transportation and telecommunications. This booklet explains the part of the ADA that prohibits job discrimination. This part of the law is enforced by the U.S. Equal Employment Opportunity Commission and State and local civil rights enforcement agencies that work with the Commission.

#### What Employers Are Covered by the ADA?

Job discrimination against people with disabilities is illegal if practiced by:

- private employers,
- state and local governments,
- employment agencies,
- labor organizations,
- and labor-management committees.

The part of the ADA enforced by the EEOC outlaws job discrimination by:

- all employers, including State and local government employers, with 25 or more employees after July 26, 1992, and
- all employers, including State and local government employers, with 15 or more employees after July 26, 1994.

Another part of the ADA, enforced by the U.S. Department of Justice, prohibits discrimination in State and local government programs and activities, including discrimination by all State and local governments, regardless of the number of employees, after January 26, 1992.

Because the ADA establishes overlapping responsibilities in both EEOC and DOJ for employment by State and local governments, the Federal enforcement effort is coordinated by EEOC and DOJ to avoid duplication in investigative and enforcement activities. In addition, since some private and governmental employers are already covered by nondiscrimination and affirmative action requirements under the Rehabilitation Act of 1973, EEOC, DOJ, and the Department of Labor similarly coordinate the enforcement effort under the ADA and the Rehabilitation Act.

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### Are You Protected by The ADA?

If you have a disability and are qualified to do a job, the ADA protects you from job discrimination on the basis of your disability. Under the ADA, you have a disability if you have a physical or mental impairment that substantially limits a major life activity. The ADA also protects you if you have a history of such a disability, or if an employer believes that you have such a disability, even if you don't.

To be protected under the ADA, you must have, have a record of, or be regarded as having a substantial, as opposed to a minor, impairment. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, walking, breathing, performing manual tasks, caring for oneself, learning or working.

If you have a disability, you must also be qualified to perform the essential functions or duties of a job, with or without reasonable accommodation, in order to be protected from job discrimination by the ADA. This means two things. First, you must satisfy the employer's requirements for the job, such as education, employment experience, skills or licenses. Second, you must be able to perform the essential functions of the job with or without reasonable accommodation. Essential functions are the fundamental job duties that you must be able to perform on your own or with the help of a reasonable accommodation. An employer cannot refuse to hire you because your disability prevents you from performing duties that are not essential to the job.

### What is Reasonable Accommodation?

Reasonable accommodation is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. For example, reasonable accommodation may include:

- providing or modifying equipment or devices,
- job restructuring,
- part-time or modified work schedules,
- reassignment to a vacant position,
- adjusting or modifying examinations, training materials, or policies,
- providing readers and interpreters, and
- making the workplace readily accessible to and usable by people with disabilities.

An employer is required to provide a reasonable accommodation to a qualified applicant or employee with a disability unless the employer can show that the accommodation would be an undue hardship -- that is, that it would require significant difficulty or expense.



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### What Employment Practices are Covered?

The ADA makes it unlawful to discriminate in all employment

- practices such as:
- recruitment
- firing
- hiring
- training
- job assignments
- promotions
- pay
- benefits
- lay off
- leave
- all other employment related activities.

It is also unlawful for an employer to retaliate against you for asserting your rights under the ADA. The Act also protects you if you are a victim of discrimination because of your family, business, social or other relationship or association with an individual with a disability.

### Can an Employer Require Medical Examinations or Ask Questions About a Disability?

If you are applying for a job, an employer cannot ask you if you are disabled or ask about the nature or severity of your disability. An employer can ask if you can perform the duties of the job with or without reasonable accommodation. An employer can also ask you to describe or to demonstrate how, with or without reasonable accommodation, you will perform the duties of the job.

An employer cannot require you to take a medical examination before you are offered a job. Following a job offer, an employer can condition the offer on your passing a required medical examination, but only if all entering employees for that job category have to take the examination. However, an employer cannot reject you because of information about your disability revealed by the medical examination, unless the reasons for rejection are job-related and necessary for the conduct of the employer's business. The employer cannot refuse to hire you because of your disability if you can perform the essential functions of the job with an accommodation.

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Once you have been hired and started work, your employer cannot require that you take a medical examination or ask questions about your disability unless they are related to your job and necessary for the conduct of your employer's business. Your employer may conduct voluntary medical examinations that are part of an employee health program, and may provide medical information required by State workers' compensation laws to the agencies that administer such laws.

The results of all medical examinations must be kept confidential, and maintained in separate medical files.

### Do Individuals Who Use Drugs Illegally Have Rights Under the ADA?

Anyone who is currently using drugs illegally is not protected by the ADA and may be denied employment or fired on the basis of such use. The ADA does not prevent employers from testing applicants or employees for current illegal drug use.

### What Do I Do If I Think That I'm Being Discriminated Against?

If you think you have been discriminated against in employment on the basis of disability after July 26, 1992, you should contact the U.S. Equal Employment Opportunity Commission. A charge of discrimination generally must be filed within 180 days of the alleged discrimination. You may have up to 300 days to file a charge if there is a State or local law that provides relief for discrimination on the basis of disability. However, to protect your rights, it is best to contact EEOC promptly if discrimination is suspected.

You may file a charge of discrimination on the basis of disability by contacting any EEOC field office, located in cities throughout the United States. If you have been discriminated against, you are entitled to a remedy that will place you in the position you would have been in if the discrimination had never occurred. You may be entitled to hiring, promotion, reinstatement, back pay, or reasonable accommodation, including reassignment. You may also be entitled to attorneys fees.

While the EEOC can only process ADA charges based on actions occurring on or after July 26, 1992, you may already be protected by State or local laws or by other current federal laws. EEOC field offices can refer you to the agencies that enforce those laws.

To contact the EEOC, look in your telephone directory under "U.S. Government." For information and instructions on reaching your local office, call:

- (800) 669-4000 (Voice)
- (800) 669-6820 (TDD)
- (In the Washington, D.C. 202 Area Code, call 202-663-4900 (voice) or 202-663-4494 (TDD).)

### Can I Get Additional ADA Information and Assistance?

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The EEOC conducts an active technical assistance program to promote voluntary compliance with the ADA. This program is designed to help people with disabilities understand their rights and to help employers understand their responsibilities under the law.

In January 1992, EEOC published a Technical Assistance Manual, providing practical application of legal requirements to specific employment activities, with a directory of resources to aid compliance. EEOC publishes other educational materials, provides training on the law for people with disabilities and for employers, and participates in meetings and training programs of other organizations. EEOC staff also will respond to individual requests for information and assistance. The Commission's technical assistance program is separate and distinct from its enforcement responsibilities. Employers who seek information or assistance from the Commission will not be subject to any enforcement action because of such inquiries.

The Commission also recognizes that differences and disputes about ADA requirements may arise between employers and people with disabilities as a result of misunderstandings. Such disputes frequently can be resolved more effectively through informal negotiation or mediation procedures, rather than through the formal enforcement process of the ADA. Accordingly, EEOC will encourage efforts of employers and individuals with disabilities to settle such differences through alternative methods of dispute resolution, providing that such efforts do not deprive any individual of legal rights provided by the statute.

## More Questions and Answers About the ADA

### **Q. Is an employer required to provide reasonable accommodation when I apply for a job?**

A. Yes. Applicants, as well as employees, are entitled to reasonable accommodation. For example, an employer may be required to provide a sign language interpreter during a job interview for an applicant who is deaf or hearing impaired, unless to do so would impose an undue hardship.

### **Q. Should I tell my employer that I have a disability?**

A. If you think you will need a reasonable accommodation in order to participate in the application process or to perform essential job functions, you should inform the employer that an accommodation will be needed. Employers are required to provide reasonable accommodation only for the physical or mental limitations of a qualified individual with a disability of which they are aware. Generally, it is the responsibility of the employee to inform the employer that an accommodation is needed.

### **Q. Do I have to pay for a needed reasonable accommodation?**

A. No. The ADA requires that the employer provide the accommodation unless to do so would impose an undue hardship on the operation of the employer's business. If the cost of providing the needed accommodation would be an undue

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hardship, the employee must be given the choice of providing the accommodation or paying for the portion of the accommodation that causes the undue hardship.

**Q. Can an employer lower my salary or pay me less than other employees doing the same job because I need a reasonable accommodation?**

A. No. An employer cannot make up the cost of providing a reasonable accommodation by lowering your salary or paying you less than other employees in similar positions.

**Q. Does an employer have to make non-work areas used by employees, such as cafeterias, lounges, or employer-provided transportation accessible to people with disabilities?**

A. Yes. The requirement to provide reasonable accommodation covers all services, programs, and non-work facilities provided by the employer. If making an existing facility accessible would be an undue hardship, the employer must provide a comparable facility that will enable a person with a disability to enjoy benefits and privileges of employment similar to those enjoyed by other employees, unless to do so would be an undue hardship.

**Q. If an employer has several qualified applicants for a job, is the employer required to select a qualified applicant with a disability over other applicants without a disability?**

A. No. The ADA does not require that an employer hire an applicant with a disability over other applicants because the person has a disability. The ADA only prohibits discrimination on the basis of disability. It makes it unlawful to refuse to hire a qualified applicant with a disability because he is disabled or because a reasonable accommodation is required to make it possible for this person to perform essential job functions.

**Q. Can an employer refuse to hire me because he believes that it would be unsafe, because of my disability, for me to work with certain machinery required to perform the essential functions of the job?**

A. The ADA permits an employer to refuse to hire an individual if she poses a direct threat to the health or safety of herself or others. A direct threat means a significant risk of substantial harm. The determination that there is a direct threat must be based on objective, factual evidence regarding an individual's present ability to perform essential functions of a job. An employer cannot refuse to hire you because of a slightly increased risk or because of fears that there might be a significant risk sometime in the future. The employer must also consider whether a risk can be eliminated or reduced to an acceptable level with a reasonable accommodation.

**Q. Can an employer offer a health insurance policy that excludes coverage for pre-existing conditions?**

A. Yes. The ADA does not affect pre-existing condition clauses contained in health insurance policies even though such clauses may adversely affect employees with disabilities more than other employees.

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**Q. If the health insurance offered by my employer does not cover all of the medical expenses related to my disability, does the company have to obtain additional coverage for me?**

A. No. The ADA only requires that an employer provide employees with disabilities equal access to whatever health insurance coverage is offered to other employees.

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## Section II: Reasonable Accommodations

Many people with common mental health conditions have a right to a reasonable accommodation at work under the Americans with Disabilities Act (ADA). When requesting accommodations, clients may sometimes need supporting documentation from their mental health providers. The following information briefly explains the law of reasonable accommodation pertaining to mental health.

### 1. What Is a Reasonable Accommodation?

A reasonable accommodation is a change in the way things are normally done at work that enables an individual to do a job, apply for a job, or enjoy equal access to a job's benefits and privileges. Common reasonable accommodations include **altered break and work schedules** (e.g., scheduling work around medical appointments), **time off for treatment**, **changes in supervisory methods** (e.g., providing written instructions, or breaking tasks into smaller parts), **eliminating a non-essential (or marginal) job function that someone cannot perform because of a disability**, and **telework**. Where an employee has been working successfully in a job but can no longer do so because of a disability, the ADA also may require **reassignment to a vacant position** that the employee can perform. These are just examples; employees are free to request, and employers are free to suggest, other modifications or changes.

### 2. Do I have to Have a Particular Condition to Get a Reasonable Accommodation?

A reasonable accommodation may be obtained for any condition that would, if left untreated, "substantially limit" one or more major life activities, which include brain/neurological functions and activities such as communicating, concentrating, eating, sleeping, regulating thoughts or emotions, caring for oneself, and interacting with others. (The client does not actually have to stop treatment. The client's symptoms in the absence of treatment are merely considered in order to determine whether the person has a "disability" under the ADA.)

**A condition does not have to result in a high degree of functional limitation 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. Further, if the client's symptoms come and go, what matters is how limiting they would be when present. Federal regulations say that some disorders should easily be found to be disabilities, including major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia.

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Other conditions may also qualify depending on the individual's symptoms. Additionally, an individual may qualify for a reasonable accommodation if he or she has had a substantially limiting impairment in the past.

The ADA, however, does not protect individuals currently engaging in the illegal use of drugs, where an employer takes an action based on such use. Someone with alcoholism or who was addicted to drugs in the past may be entitled to a reasonable accommodation, such as time off for treatment. However, the ADA specifically says that employers are not required to tolerate employees using or being under the influence of alcohol or illegal drugs on the job, or unsatisfactory performance or conduct relating to the use of alcohol or illegal drugs.

### **3. What Kind of Reasonable Accommodation Could I Get?**

If you have a disability, the employer is legally required to provide a reasonable accommodation that would help you do the job. If more than one accommodation would work, the employer may choose which one to provide. However, an employer cannot be required to provide an accommodation that is simply unreasonable on its face (that is, not plausible or feasible), or that would cause significant financial or operational difficulty. It also never has to excuse a failure to meet production standards or rules of conduct that are both necessary for the operation of the business and applied equally to all employees, or to retain an individual who cannot do the job even with a reasonable accommodation.

### **4. When Is It Important to Request a Reasonable Accommodation?**

Because an employer does not have to excuse failure to meet production standards that are consistently applied, even if the difficulty was caused by a health condition or the side effects of medication, it could be in your interest to request an accommodation before any problems at work occur or become worse. An accommodation may help to prevent discipline or even termination by enabling you to perform the job successfully.

### **5. How Can I Get a Reasonable Accommodation?**

You may ask you to document his or her condition and its associated functional limitations, and to explain how a requested accommodation would help. The employer, perhaps in consultation with a health care professional, will use this information to evaluate whether to provide a reasonable accommodation, and if so which one. The person evaluating the accommodation request also may contact you to ask for clarification of what you have written, or to provide you with additional information to consider. For example, you may be told about a particular job function and asked whether the requested accommodation would help you to perform it, or you may be asked whether a different accommodation would be effective where, for example, the requested accommodation would be too difficult or costly for the employer to provide.

Employers are required to keep all information related to reasonable accommodation requests confidential.

### **6. Am I Obligated to Disclose My Medical Information?**

The ADA does not alter a health provider's ethical or legal obligations. You should request a reasonable accommodation or provide an employer with medical information only if you choose to do so.

### **7. Could an Employer Discriminate Against Me Because of the Information I Provide?**

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The ADA prohibits employers from harassing you because of a mental health condition, and from terminating or taking other adverse actions against you because of a mental health condition. Therefore, unless the information you provide shows that you are unable to perform the essential duties of the job even with a reasonable accommodation, the employer legally cannot take adverse action based on the information.

However, employers sometimes discriminate illegally. You therefore may wish to discuss with you the risks associated with disclosing the condition (such as potential illegal discrimination), and with not disclosing it (such as not having a reasonable accommodation that may be necessary to do the job).

### 8. What Kind of Documentation Would Be Helpful?

Employers may require documentation that establishes how your condition limits job performance, and how an accommodation would help to overcome the limitations. However, you should not simply provide your medical records, because they will likely contain unnecessary information. Documentation is most likely to help you obtain a reasonable accommodation if it explains, using plain language, the following:

- Your professional qualifications and the nature and length of your relationship with the client. A brief statement is sufficient.
- The nature of the client's condition. Based on your professional judgment, state the nature of the client's mental health condition, even if the client is currently not experiencing symptoms (e.g., because of the use of medication or because the condition is in remission). It may be sufficient to state the general type of disorder (e.g., "an anxiety disorder"), or to describe how the condition substantially limits a brain/neurological function or some other major life activity.
- The client's functional limitations in the absence of treatment. Describe the extent to which the condition *would* limit a brain or neurological function, or another major life activity (e.g., concentrating, interacting with others, eating, sleeping, learning, reading, communicating, or thinking), in the absence of therapy, medication, and any other treatment. If the symptoms of the condition come and go or are in remission, describe the limitations during an active episode. It is sufficient to establish substantial limitation of one major life activity.
- The need for a reasonable accommodation. Explain how the client's condition makes changes at work necessary. For example, if you need an accommodation to perform a particular job function, you should explain how the client's symptoms - *as they actually are, with treatment* - make performing the function more difficult. If necessary, provide a description of your job duties. *Limit your discussion to the specific problems that may be helped by a reasonable accommodation.* Also explain to the employer why you may need an accommodation such as a schedule change (e.g., to attend a therapy appointment during the workday) or time off (e.g., to adjust to a new medication, receive treatment, or recover).
- Suggested Accommodation(s). If you are aware of an effective accommodation, you may suggest it. Do not overstate the need for a particular accommodation, in case an alternative is necessary.

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### Section III: Accommodations for Mental Health Impairments

(From the Job Accommodation Network)

#### What are mental health impairments?

The DSM-5 (the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), which is published by the American Psychiatric Association (APA), provides diagnostic criteria for mental health impairments. According to the DSM-5 (APA, 2013), a mental health impairment is:

- a mental disorder is a syndrome characterized by clinically significant disturbance in an individual's cognition, emotion regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning.
- Mental disorders are usually associated with significant distress in social, occupational, or other important activities.
- An expectable or culturally approved response to a common stressor or loss, such as the death of a loved one, is not a mental disorder.
- Socially deviant behavior (e.g., political, religious, or sexual) and conflicts that are primarily between the individual and society are not mental disorders unless the deviance or conflict results from a dysfunction in the individual, as described above.

The National Alliance on Mental Illness (NAMI) (n.d.a) defines a mental health impairment as:

- a medical condition that disrupt a person's thinking, feeling, mood, ability to relate to others, and daily functioning. Just as diabetes is a disorder of the pancreas, mental illnesses are medical conditions that often result in a diminished capacity for coping with the ordinary demands of life.

#### How prevalent are mental health impairments?

Approximately 61.5 million Americans, one in four adults, experience a mental health impairment in a given year (National Alliance on Mental Illness, 2013). One in seventeen individuals lives with a serious mental health impairment, such as schizophrenia, major depression, or bipolar disorder (National Institute of Mental Health, 2013).

#### What are some common mental health impairments?

JAN receives numerous accommodation questions related to individuals with mental health impairments working successfully. Although there are various definitions and lists of impairments, this document covers those that are received the most by JAN. NAMI provides useful definitions of mental health impairments and statistics on their prevalence. The following (NAMI, n.d.b) is a summary of these:



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- **Bipolar disorder**, sometimes referred to as manic depression, "is a medical illness that causes extreme shifts in mood, energy, and functioning. Bipolar disorder is a chronic and generally life-long condition with recurring episodes of mania and depression that can last from days to months that often begin in adolescence or early adulthood, and occasionally even in children."
  - Estimates indicate approximately 2.6% of American adults, or 6.1 million people, have bipolar disorder (NAMI, 2013)
- **Borderline personality disorder (BPD)** is "an often misunderstood, serious mental illness characterized by pervasive instability in moods, interpersonal relationships, self image, and behavior. It is a disorder of emotional dysregulation. This instability often disrupts family and work, long-term planning, and the individual's sense of self-identity."
  - Estimates indicate that 4-5% of American adults have BPD (NAMI, 2013).
- **Major depression** is "persistent and can significantly interfere with an individual's thoughts, behavior, mood, activity, and physical health. Among all medical illnesses, major depression is the leading cause of disability in the United States and many other developed countries."
  - Estimates indicate that 14.8 million American adults have major depression (NAMI, 2013).
- **Obsessive compulsive disorder (OCD)** "occurs when an individual experiences obsessions and compulsions for more than an hour each day, in a way that interferes with his or her life."
  - Estimates indicate that 2.2 million American adults have OCD (NAMI, 2013).
- **Panic disorder** occurs when a person "experiences recurrent panic attacks, at least one of which leads to at least a month of increased anxiety or avoidant behavior. Panic disorder may also be indicated if a person experiences fewer than four panic episodes but has recurrent or constant fears of having another panic attack."
  - Estimates indicate that 6 million American adults have panic disorder (NAMI, 2013).
- **Post traumatic stress disorder (PTSD)** is "an anxiety disorder that can occur after someone experiences a traumatic event that caused intense fear, helplessness, or horror. While it is common to experience a brief state of anxiety or depression after such occurrences, people with PTSD continually re-experience the traumatic event; avoid individual's, thoughts, or situations associated with the event; and have symptoms of excessive emotions. People with this disorder have these symptoms for longer than one month and cannot function as well as they did before the traumatic event. PTSD symptoms usually appear within three months of the traumatic experience; however, they sometimes occur months or even years later."
  - Estimates indicate that 7.7 million American adults have PTSD; this includes 15-30% of veterans (NAMI, 2013).
- **Schizophrenia** "often interferes with a person's ability to think clearly; to distinguish reality from fantasy; and to manage emotions, make decisions, and relate to others."
  - Estimates indicate that 2.4 million American adults have schizophrenia (NAMI, 2013).
- **Seasonal affective disorder (SAD)** is "characterized by recurrent episodes of depression – usually in late fall and winter – alternating with periods of normal or high mood the rest of the year."
  - Note: SAD is not regarded as a separate disorder by the DSM-5 (APA, 2013), but it is an added descriptor for the pattern of depressive episodes in patients with major depression or bipolar disorder.

## Are mental health impairments considered disabilities under the ADA?

The ADA does not contain a list of medical conditions that constitute disabilities. Instead, the ADA has a general definition of disability that each person must meet (EEOC Regulations . . . , 2011). Therefore, some people with mental health impairments will have a disability under the ADA and some will not.

A person has a disability if he/she has a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or is regarded as having an impairment (EEOC Regulations . . . , 2011). For more information about how to determine whether a person has a disability under the ADA, visit <http://AskJAN.org/corner/vol05iss04.htm>.

## Where can employers get additional information about mental health impairments and the ADA?

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JAN provides resources on mental health impairments and the ADA at <http://AskJAN.org/media/psyc.htm>. This includes accommodation ideas, information on the ADA and its amendments, and guidance from the EEOC. Two EEOC guidances that may be helpful working through the accommodation process are: The ADA and Psychiatric Disabilities at <http://www.eeoc.gov/policy/docs/psych.html> and The ADA: Applying Performance and Conduct Standards to Employees with Disabilities at <http://www.eeoc.gov/facts/performance-conduct.html>.

### Accommodating Employees with Mental Health Impairments

(Note: People with mental health impairments may develop some of the limitations discussed below, but seldom develop all of them. Also, the degree of limitation will vary among individuals. Be aware that not all people with mental health impairments will need accommodations to perform their jobs and many others may only need a few accommodations. The following is only a sample of the possibilities available. Numerous other accommodation solutions may exist.)

#### Questions to Consider:

1. What limitations is the employee with a mental health impairment experiencing?
2. How do these limitations affect the employee and the employee's job performance?
3. What specific job tasks are problematic as a result of these limitations?
4. What accommodations are available to reduce or eliminate these problems? Are all possible resources being used to determine possible accommodations?
5. Has the employee with a mental health impairment been consulted regarding possible accommodations?
6. Once accommodations are in place, would it be useful to meet with the employee with a mental health impairment to evaluate the effectiveness of the accommodations and to determine whether additional accommodations are needed?
7. Do supervisory personnel and employees need training regarding mental health impairments?

#### Accommodation Ideas:

##### Concentration:

- Reduce distractions in the work area:
  - Provide space enclosures, sound absorption panels, or a private office
  - Allow for use of white noise or environmental sound machines
  - Allow the employee to listen to soothing music
  - Provide a noise cancelling headset
  - Plan for uninterrupted work time
  - Purchase organizers to reduce clutter
- Increase natural lighting or provide full spectrum lighting
- Allow flexible work environment:
- Flexible scheduling
- Modified break schedule
- Work from home/Flexi-place
- Divide large assignments into smaller tasks and goals
- Use auditory or written cues as appropriate
- Restructure job to include only essential functions
- Provide memory aids such as schedulers, organizers, and / or apps

##### Memory:

- Provide written as well as verbal instructions
- Provide written checklists
- Use a wall calendar
- Use a daily or weekly task list

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- Provide verbal prompts and reminders
- Use electronic organizers, hand held devices, and /or apps
- Allow the employee to record meetings and trainings
- Provide printed minutes of meetings and trainings
- Allow additional training time for new duties
- Provide a mentor for daily guidance
- Provide reminders of important deadlines via e-mails, memos, and weekly supervision
- Use notebooks, planners, or sticky notes to record information for easy retrieval
- Provide cues to assist in location of items by using labels, color coding, or bulletin boards
- Post written instructions for use of equipment

### Organization:

- Use daily, weekly, and monthly task lists
- Use calendar with automated reminders to highlight meetings and deadlines
- Use electronic organizers, mobile devices, and / or apps
- Divide large assignments into smaller tasks and goals
- Use a color coding scheme to prioritize tasks
- Hire a job coach or a professional organizer
- Assign a mentor to assist employee

### Time Management / Completing Tasks:

- Make daily TO-DO lists and check items off as they are completed
- Provide organizational tools such as electronic schedulers, recorders, software organizers, calendars, watches, and apps
- Divide large assignments into smaller tasks and steps
- Schedule weekly meetings with supervisor, manager, or mentor to determine if goals are being met
- Remind employee of important deadlines
- Assign a mentor to assist with determining goals, providing daily guidelines, reminding of important deadlines
- Consider providing training on time management

### Stress / Emotions:

- Encourage use of stress management techniques to deal with frustration
- Allow the presence of a support animal
- Allow telephone calls during work hours to doctors and others for needed support
- Use a mentor or supervisor to alert the employee when his/her behavior is becoming unprofessional or inappropriate
- Assign a supervisor, manager, or mentor to answer the employee's questions Restructure job to include only essential functions during times of stress
- Refer to counseling, employee assistance programs (EAP)
- Provide backup coverage for when the employee needs to take breaks
- Allow flexible work environment:
- Flexible scheduling
  - Modified break schedule
  - Leave for counseling
  - Work from home/Flexi-place

### Panic Attacks:

- Allow the employee to take a break and go to a place where s/he feels comfortable to use relaxation techniques or contact a support person

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- Identify and remove environmental triggers such as particular smells or noises
- Allow the presence of a support animal

### Sleep Disturbances:

- Allow for a flexible start time
- Combine regularly scheduled short breaks into one longer break
- Provide a place for the employee to sleep during break
- Allow the employee to work one consistent schedule
- Provide a device such as a Doze Alert or other alarms to keep the employee alert
- Increase natural lighting or provide full spectrum lighting

### Fatigue:

- Allow flexible work environment:
  - Flexible scheduling
  - Modified break schedule
  - Work from home/Flexi-place
- Provide a goal-oriented workload
- Reduce or eliminate physical exertion and workplace stress
- Implement ergonomic workstation design

### Attendance:

- Allow flexible work environment:
  - Flexible scheduling
  - Modified break schedule
  - Leave for counseling
  - Work from home/Flexi-place
- Provide straight shift or permanent schedule
- Allow the employee to make up the time missed
- Modify attendance policy
  - Example: count one occurrence for all PTSD-related absences

### Coworker Interaction:

- Encourage the employee to walk away from frustrating situations and confrontations
- Allow the employee to work from home part-time
- Provide partitions or closed doors to allow for privacy
- Provide disability awareness training to coworkers and supervisors

### Working Effectively:

Two common issues that JAN receives inquiries on are: (1) what accommodations will work for individuals with mental health impairments when workplaces are implementing substantial changes, and (2) what accommodations will help supervisors work effectively with individuals with mental health impairments. Many accommodation ideas are born from effective management techniques. When organizations are implementing workplace changes, it is important that key personnel recognize that a change in the environment or in supervisors may be difficult. Maintaining open channels of communication to ensure any transitions are smooth, and providing short weekly or monthly meetings with employees to discuss workplace issues can be helpful.

Supervisors can also implement management techniques that support an inclusive workplace culture while simultaneously providing accommodations. Techniques include the following:

- Provide positive praise and reinforcement,

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- Provide day-to-day guidance and feedback,
- Provide written job instructions via email,
- Develop clear expectations of responsibilities and the consequences of not meeting performance standards,
- Schedule consistent meetings with employee to set goals and review progress,
- Allow for open communication,
- Establish written long term and short term goals,
- Develop strategies to deal with conflict,
- Develop a procedure to evaluate the effectiveness of the accommodation,
- Educate all employees on their right to accommodations,
- Provide sensitivity training to coworkers and supervisors,
- Do not mandate that employees attend work related social functions, and
- Encourage all employees to move non-work-related conversations out of work areas.

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### Section IV: Resources

#### **Equal Employment Opportunity Commission**

P.O. Box 7033

Lawrence, Kansas 66044

(800) 669-4000 (Voice), (800) 669-6820 (TDD)

For more specific information about ADA requirements affecting *public accommodations and State and local government services* contact:

#### **Department of Justice**

Office on the Americans with Disabilities Act

Civil Rights Division

P.O. Box 66118

Washington, DC 20035-6118

(202) 514-0301 (Voice)

(202) 514-0381 (TDD)

(202) 514-0383 (TDD)

For more specific information about requirements for *accessible design in new construction and alterations* contact:

#### **Architectural and Transportation Barriers**

##### **Compliance Board**

1111 18th Street, NW

Suite 501

Washington, DC 20036

800-USA-ABLE

800-USA-ABLE (TDD)

For more specific information about ADA requirements affecting *transportation* contact:

#### **Department of Transportation**

400 Seventh Street, SW

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Washington, DC 20590

(202) 366-9305

(202) 755-7687 (TDD)

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*judgment before applying any recommendation or advice that you may receive on or through the materials provided by OSML. Please contact your employment counsel or [info@eeoc.gov](mailto:info@eeoc.gov) for more information and guidance.*