

# Depression, PTSD, & Other Mental Health Conditions in the Workplace: Your Legal Rights

If you have depression, post-traumatic stress disorder (PTSD), or another mental health condition, you are protected against **discrimination** and **harassment** at work because of your condition, you have workplace **privacy** rights, and you may have a legal right to get reasonable **accommodations** that can help you perform and keep your job. The following questions and answers briefly explain these rights, which are provided by the Americans with Disabilities Act (ADA). You may also have additional rights under other laws not discussed here, such as the Family and Medical Leave Act (FMLA) and various medical insurance laws.

## 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 (see Question 5), and it must keep the information confidential, even from co-workers. (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. Just a few examples of possible accommodations include altered break and work schedules (e.g., scheduling work around therapy appointments), quiet office space or devices that create a quiet work environment, changes in supervisory methods (e.g., written instructions from a supervisor who usually does not provide them), specific shift assignments, and permission to work from home.

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 don't 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.

### **4. How can I get a reasonable accommodation?**

Ask for one. Tell a supervisor, HR manager, or other appropriate person that you need a change at work because of a medical condition. You may ask for an accommodation at any time. Because an employer does not have to excuse poor job performance, even if it was caused by a medical condition or the side effects of medication, it is generally better to get a reasonable accommodation **before** any problems occur or become worse. (Many people choose to wait to ask for accommodation until after they receive a job offer, however, because it's very hard to prove illegal discrimination that takes place before a job offer.) You don't need to have a particular accommodation in mind, but you can ask for something specific.

### **5. What will happen after I ask for a reasonable accommodation?**

Your employer may ask you to put your request in writing, and to generally describe your condition and how it affects your work. The employer also may ask you to submit a letter from your health care provider documenting that you have a mental health condition, and that you need an accommodation because of it. If you do not want the employer to know your specific diagnosis, it may be enough to provide documentation that describes your condition more

generally (by stating, for example, that you have an "anxiety disorder"). Your employer also might ask your health care provider whether particular accommodations would meet your needs. You can help your health care provider understand the law of reasonable accommodation by bringing a copy of the EEOC publication [The Mental Health Provider's Role in a Client's Request for a Reasonable Accommodation at Work](#) to your appointment.

If a reasonable accommodation would help you to do your job, your employer must give you one unless the accommodation involves significant difficulty or expense. If more than one accommodation would work, the employer can choose which one to give you. Your employer can't legally fire you, or refuse to hire or promote you, because you asked for a reasonable accommodation or because you need one. It also cannot charge you for the cost of the accommodation.

#### **6. 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 can be found at [www.dol.gov/whd/fmla](http://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](#).

#### **7. What if I am being harassed because of my condition?**

**Harassment** based on a disability is not allowed under the ADA. You should tell your employer about any harassment if you want the employer to stop the problem. Follow your employer's reporting procedures if there are any. If you report the harassment, your employer is legally required to take action to prevent it from occurring in the future.

#### **8. 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 for contacting the EEOC or filing a charge.** For more information, visit <http://www.eeoc.gov>, call 800-669-4000 (voice) or 800-669-6820 (TTY), or visit your local EEOC office (*see* <http://www.eeoc.gov/field/index.cfm> for contact information).