

HR Weekly Podcast
March 12, 2014

Today is March 12, 2014, and welcome to the HR Weekly Podcast from the State Human Resources Division. Today's topic deals with depression and how employers need to be cautious in administering leave under the Family and Medical Leave Act, or FMLA, and on guard against discrimination that would violate the Americans with Disabilities Act, or ADA.

In November, 2013, Integrated Benefits Institute, or IBI, released a study showing that depression affects 10-20 percent of employees. This study showed that per 100 employees, depressions cost employers approximately \$62,000 per year. This amount can be broken down as follows: presenteeism at \$31,000, sick days at \$19,000, medical treatments at \$9,000, short-term disability at \$2,000, and long-term disability at \$1,000. Further, only about one third of employees with depression currently receive treatment for their condition.

While depression is costly because it causes absenteeism, an employee does not have to be absent to be nonproductive. The term "presenteeism" refers to employees who show up for work but do not perform their jobs satisfactorily. The IBI study showed that employees with depression miss 8 more days a year than those without depression. And, employees with depression have 11 more days of presenteeism per year.

In August, 2013, Patricia Eyres of the Eyres Law Group conducted a webinar where she pointed out major issues for employers to consider surrounding depression. In that webinar, Eyres addressed potential FMLA and ADA issues for employers.

If an employee requests time off due to depression or anxiety, Eyres suggests employers ask themselves the following questions in connection with the FMLA. Does the FMLA apply? Does the employee have a serious health condition? Has a medical provider provided the proper certification for a serious health condition? Do the employer's policies or procedures apply? And, does the employee have other available avenues? Further, Eyres warned employers dealing with FMLA leave to be careful about fitness for duty certifications. Employers can have policies requiring a medical provider to certify that an employee is well enough to return to work, but this policy cannot apply only to employees on FMLA leave. Eyres went on to say that an employer requiring a fitness for duty certification must inform the employee of the requirement in the initial designation letter. The health care provider needs to be provided a sufficient description of the employee's essential job functions.

From an ADA standpoint, depression often fits the ADA's definition of disability. This fit means that employers and employees must interactively work together to see if reasonable accommodations in the workplace are necessary for the employee to perform his job. Eyres states that the need for the interactive process can be triggered by a note from a medical provider that the employee needs to avoid certain stressors in the workplace. Sometimes the trigger can be a performance review or disciplinary action where the employee states that the problem is a result of his condition. In ADA cases, Eyres suggests these questions for employers to ask themselves. Does the ADA apply? Does the condition meet the definition of disability? Has the doctor provided functional limitations and work restrictions? Is an interactive process required? Is there an appropriate accommodation? For depression, Eyres presented a list of possible accommodations. For attendance, flexible scheduling may be appropriate. For concentration or memory problems, employers could look for ways to reduce distractions including working from home, dividing large assignments into smaller tasks, job restructuring, or providing memory aids. For emotions, flexible breaks and stress management may be appropriate. For fatigue, having a goal oriented workload or reducing the number of an employee's tasks could be appropriate. For memory, providing a job coach, allowing extra training time, or having written checklists may be appropriate. For organization, using a daily, weekly, and monthly task list or dividing large assignments into smaller tasks could help.

If you have a question about this topic, please contact your HR Consultant at 803-896-5300. Thank you.