

Mental Health Parity Act of 2008 and the ADA: Understanding the Intersect

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Legislative Review

- Americans with Disabilities Act of 1990
 - Effective July 26, 1992 50 or more employees
 - Effective July 26, 1994 25 or more employees
- Americans with Disabilities Act Amendments Act of 2008
 - Effective January 1, 2009
- Mental Health Parity and Addiction Equity Act of 2008
 - Effective January 1, 2010 (Delayed)

Other Legislative Considerations

- Health Insurance Portability and Accountability Act (HIPPA)
 - Limits the ability of a new employer plan to exclude coverage for preexisting conditions;
 - Prohibits discrimination against employees and dependent family members based on any health factors they may have;
 - Guarantees that certain individuals have access to, and can renew, individual health insurance policies

Revisiting Definitions

- ADA Definition of Disability includes:
 - Physical or **MENTAL** condition that substantially limits one or more major life activities
 - Includes current addiction to Alcohol
 - Use of Illegal drugs not covered
 - A record of such an impairment
 - History of addiction to illegal substances
 - Being regarded as having such an impairment
 - ADA Amendment Act strengthens this prong

The ADA and Insurance

- Title V of the ADA prohibits:
 - Underwriting, classifying or administering risks that are based on or not consistent with state law;
 - Prohibits “disability based distinctions” in insurance unless such distinctions are justified by the risks or costs associated with the disability
 - Singles out a particular disability (e.g. deafness, AIDS, schizophrenia) or a discrete group of disabilities (e.g. cancers, muscular dystrophies)

The ADA Does NOT:

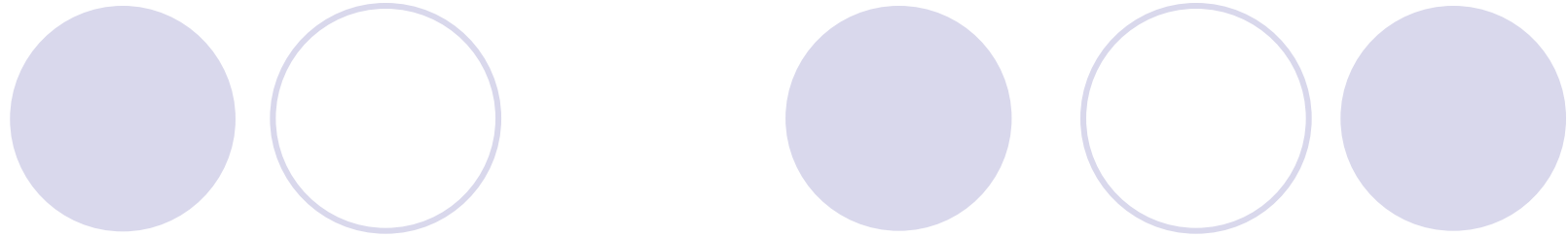
- Require employers to provide health insurance
- Require employers to provide the same benefits to all individuals regardless of their disability status
- Prohibit a pre-existing condition clause

The ADA Does Require:

- Employers to treat all applicants/employees the same as other individuals in the same class of position
 - Equal access to benefits available
 - Employee Assistance Programs
 - Health Care/Dental Care/Life Insurance, etc.
- Employers to provide reasonable accommodation to qualified individuals

Forms of Reasonable Accommodation Often Utilized by Individuals with Mental Illness

- Altered Work Schedule
 - Part-time vs Full Time
 - Modified work schedule (arrival/departure times)
 - Additional Break Periods
 - Exemption from Mandatory Overtime
 - Exemption from rotating shifts
- Leave
 - Intermittent Leave for medical treatment (i.e. leave early 2x's a week, attend AA meeting during lunch hour, etc.)
 - “I will come to work when I can” not “reasonable” in the majority of scenarios



○ Extended Leave

- Amount of time is factor of “reasonable”
- May be concurrent with eligible leave (FMLA, Vacation/Sick, etc.)
- May be in addition to other benefits (paid vs unpaid based on available benefit)

● Work From Home

- On days when disability is exacerbated
- Split schedule (3 days in the office, 2 days at home, etc.)

Thoughts to Consider:

- My “disability” made me do it is not a defense under the law
- Individuals must request accommodations, employers are not required to “second guess” the need for one
 - Identifying a disability and need for accommodation after the fact will be TOO LATE!
- Employers/Individuals may need assistance to identify types of accommodations that may be needed in various settings/circumstances
- Individuals need to understand their rights BEFORE they engage in employment in order to have the best shot of protecting themselves against discrimination
- Consumer education regarding the HIPPA and Mental Health Parity Act are essential components of employment readiness and retention



Still Have Questions???????

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