

P&A TiDBITS

LEGAL NEWS & other

Disability-Related info

SEPTEMBER 2019



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ACTING SECRETARY OF LABOR PATRICK PIZZELLA ENCOURAGES GOVERNORS TO COLLECT DATA ON STATE WORKERS WITH DISABILITIES TO PROMOTE HIRING

In light of the 29th anniversary of the signing of the **Americans with Disabilities Act (ADA)**, Acting U.S. Secretary of Labor Patrick Pizzella sent letters to America's governors encouraging them to collect data on the numbers of state employees with disabilities. Although not a requirement for states, tracking disability employment data allows states to better assess their hiring practices and compare their results with other states. Currently, only a few states routinely track this information.

Acting Secretary Pizzella also encouraged the governors to make use of the State Exchange on Employment and Disability (SEED), a federal-state initiative funded by the Department's Office of Disability Employment Policy (ODEP). SEED provides direct policy assistance, resources, and subject-matter expertise to state governors' offices and legislatures on various disability employment-related issues.

"Promoting valuable information from states can significantly help Americans with disabilities meet our shared goal for every American to secure employment in their chosen field," said Acting Secretary Patrick Pizzella.

Many state governors and legislators have taken steps to introduce and enact initiatives designed to increase employment opportunities for citizens with disabilities. The Acting Secretary's letter notes that the 30th anniversary of the ADA in July 2020 provides states an opportunity to both highlight the progress of those initiatives and to develop new state employment initiatives and policies.

About SEED: Through the State Exchange on Employment and Disability (SEED), ODEP works directly with organizations that represent state policymakers to provide timely data, review policy options, promote positive state examples, and offer policy assistance to ensure that state-level policy critical to employment success—such as workforce development, transportation, and technology—is disability-inclusive.

Agency: Office of Disability Employment Policy
Date: July 31, 2019 / Release No. 19-1396-NAT
Contact: Bennett Gamble; Phone: 202-693-6587 / Email: Gamble.Bennett@dol.gov

Source: <https://www.dol.gov/newsroom/releases/odep/odep20190731>

Accessibility NEWS

Just when you thought . . .

ACCOMMODATING AN ANXIOUS WORKFORCE

The American population, and thus the American workforce, is becoming increasingly subject to anxiety and depression disorders. Employers must find ways to retain and motivate employees with such diagnoses in order to maintain a competitive advantage and to avoid legal liability.

Nobody knows precisely how many U.S. employees suffer from anxiety and depression, but they are among the most common mental health disorders in the United States, and available statistics show that it is likely that significantly more workers will be diagnosed in the coming years. A survey conducted by the Anxiety Disorders Association of America revealed that 72% of people self-report dealing with daily stress and anxiety that interfere with their working lives at least moderately. Meanwhile, only 9% of the same population has been officially diagnosed with an anxiety disorder. The Wall Street Journal recently reported that 54% of workers under age 23 reported feeling "anxious or nervous due to stress," while 40% of millennials reported the same. Anxiety disorders can affect workplace performance, workplace relationships, and quality of work.

What's An Employer Supposed To Do?

The answer to this question generally starts with what an employer is legally obligated to do to accommodate an employee with a known anxiety or other mental health disorder. Under the **Americans with Disabilities Act of 1990 ("ADA")**, as amended, and comparable state laws applicable in every state, employers have a legal obligation to provide reasonable accommodations for employees with disabilities. Anxiety and similar mental health disorders are often qualified disabilities under federal and state disability laws.

For employees with mental health disabilities, courts have sanctioned a variety of accommodations, including modified work schedules, reassignment, granting indefinite leave, and telecommuting, among others. However, this does not mean that employers must accommodate bad behavior or perpetual underperformance. Employers also have no duty to provide an employee with requested accommodations which place an undue hardship on the employer, financial or otherwise.

Beyond legal obligations, employers may want to take additional steps to create a work environment that permits anxious employees to thrive. Employers often underutilize or underemphasize benefits that are already available to their workforce, such as employee assistance programs, which provide confidential counseling to covered employees, as well as free online educational or counseling programs available under many insurance plans.

Some employers, in addition to providing reasonable accommodations to employees with anxiety disorders, provide in-house benefits to increase productivity and promote workforce wellness. Such benefits include making available on-site social workers to provide confidential counseling, providing in-house physical wellness programs such as yoga, training employees on mindfulness and meditation, and simply permitting or promoting conversations surrounding mental health issues at work.

Creating an atmosphere of trust, respect, and inclusion is not easy, but it may be essential as younger generations enter the workforce. Anxiety is not likely to disappear in the near future. If you have an employee who has or whom you suspect has a mental health disorder, you should contact your attorney to inquire as to your legal obligations with respect to that individual. Failure to do so may result in illegal actions and resulting unwanted lawsuits down the road. Dickinson Wright PLLC is ready to assist employers with their policies proactively to prevent issues before they arise.

Source: http://hr.dickinson-wright.com/2019/07/22/accommodating-an-anxious-workforce/?fbclid=IwAR0ok2t_sdaTXb-V1IkPPJxwOIL1CsXUAsXTKThT0QS0P0jJA9sspnqCrVc#page=1

ChenMed, LLC and PMR Virginia Holding, LLC. Pays \$200,000 to Settle EEOC Disability Discrimination Lawsuit



ChenMed, LLC and PMR Virginia Holding, LLC, Delaware corporations operating medical centers for seniors, will pay \$200,000 and provide other relief to settle a disability discrimination lawsuit brought by the Equal Employment Opportunity Commission (EEOC), the agency announced July 30th.

According to the EEOC's lawsuit, Trudy Jelderks was hired in August 2013 as a market sales manager (MSM) for the Tidewater, VA market. In June 2014, Jelderks was also assigned to cover the Richmond, VA market. Approximately two months later, Jelderks informed her employers she had colon cancer. Shortly after disclosing her diagnosis, she was removed from the Richmond market. Jelderks was then hospitalized due to her colon cancer that October. During her hospitalization, Jelderks was pressured by the chief medical officer (CMO) to voluntarily give up her MSM duties, which she refused to do. Jelderks complained to the human resource office about the CMO's request during her hospitalization. Approximately one month later, the companies fired Jelderks because of her disability and in retaliation for her complaints about the CMO's discriminatory conduct.

The EEOC filed suit in the U.S. District Court for the Eastern District of Virginia, Norfolk Division (*EEOC v. ChenMed, LLC and PMR Virginia Holding, LLC*, Civil Action No. 2:18-cv-00516) after first attempting to reach a pre-litigation settlement through its voluntary conciliation process. In addition to providing monetary relief for Jelderks, the companies entered into a two-year consent decree requiring them to re-distribute their formal, written anti-discrimination policy. The decree further requires the companies conduct anti-harassment training for their officers, managers, supervisors and employees, post certain documents, and provide periodic reports to the EEOC.

Source: <https://www.eeoc.gov/eeoc/newsroom/release/7-30-19a.cfm>

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