An Employer Matrix – Addressing Mental Health Issues in the Workplace

Labor & Employment Law Update

By Timm Schowalter on June 28, 2023

With the rise of active shooters in workplaces and schools there is an ever increasing concern over workplace violence and related employee mental issues. When addressing these concerns a company is faced with a complicated legal matrix to navigate. Companies must closely analyze and comply with the Occupational Safety and Health Act (OSH Act), Americans with Disabilities Act (ADA), Family Medical Leave Act (FMLA), and state workers' compensation laws, among others.

The Occupational Safety and Health Administration (OSHA) is responsible for ensuring safe and healthy working conditions for employees. While OSHA does not specifically address mental illness in its regulations, it recognizes the importance of addressing mental health concerns in the workplace to promote overall well-being and productivity. Under the OSH Act, employers have a "general duty" to provide a workplace that is free from recognized hazards that may cause death or serious physical harm to employees. This duty includes addressing mental health issues if they are identified as hazards in the workplace.

So, when does an employee's mental illness become a known workplace hazard? Under OSHA's recordkeeping rule a "mental illness will not be considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience" stating that the employee has a job-related mental illness. While such an opinion may be necessary for OSHA to link the cause of the mental illness to the workplace, an opinion from a licensed health care professional may not be required for an employer to recognize an employee's mental health issue as a potential hazard.

Objective information providing notice of a potential mental illness may also trigger an employer's obligations under the Americans with Disabilities Act (ADA) and the Family Medical Leave Act. The ADA not only prohibits discrimination against individuals with mental health conditions and requires employers to provide reasonable accommodations to qualified individuals who need them, but it also sets forth specific guidelines on when and how an employer may seek medical related information from the employee. Questions that are routinely

asked include:

- Is an employer legally authorized to demand an employee exhibiting some erratic behavior and, arguably, signs of mental illness obtain a fitness for duty mental evaluation?
- Can an employer force an employee to use its employee assistance program (EAP)?
- Can an employer place the employee on an indefinite leave of absence on account of the erratic behavior?

All these questions are inherently fact specific to the individual situation and require a detailed analysis with legal counsel to ensure compliance with the ADA.

The objective information placing the employer on notice may also provide the employer with sufficient information to conditionally designate an employee's absence as FMLA leave and trigger the employer's obligations to provide the employee with the prescribed FMLA paperwork. However, this must be accomplished without running afoul of the ADA and unlawfully regarding the employee as disabled.

Indeed, OSHA encourages employers to implement policies and practices that promote mental health and prevent mental illness-related hazards. This can involve creating a supportive work environment, offering EAPs, conducting stress management training, and addressing work-related factors that may contribute to mental health problems, such as excessive workloads or lack of job control. Mental health issues create a mind-bending legal trick box for an employer that must be prudently addressed with legal counsel.