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Mental Health Support for Attorneys Through the ADA

BY SCOTT M. ABBOTT, ESQ.

May is Mental Health Awareness Month, which seeks to raise awareness of mental health issues, fight stigma, and provide support. Mental health challenges can affect all individuals, but their increasing prevalence among attorneys is particularly concerning.

According to a 2023 survey,¹ 71 percent of attorneys polled said they had anxiety, and 38 percent had experienced depression. These numbers represented a 5 percent and 38 percent increase, respectively, from 2022. More than 60 percent said they were overwhelmed, exhausted, irritable, and unable to concentrate.

When asked what contributed to these struggles, more than 76 percent of lawyers blamed their work environment. Specifically, they cited billable hours pressures, an inability to disconnect from work, and lack of sleep. As a result, lawyers reported feelings of failure, self-doubt, increased cynicism and negativity, and decreased career satisfaction.

While these statistics may be surprising, the underlying reasons are not. Most lawyers know very well that the legal profession imposes heightened pressures. Lawyers regularly deal with long hours, demanding clients, challenging opponents, and multiple cases. Lawyers also know that the stakes are very high for their clients, who rely on the lawyer's skills to obtain the best possible outcome, which could include keeping the client out of jail, maintaining a child custody arrangement, or avoiding an adverse jury verdict.

Recognizing the contributing factors, however, is only one part of the pathway to improvement. The next, more important, step is to find ways to treat and successfully cope with these challenges. Part of the difficulty is the stigma that still exists in admitting to mental health struggles.

As one lawyer recounted in his own journey with depression, he was constantly sad, fatigued, and unable to concentrate. Even after taking a three-month leave of absence from his law firm, he noticed changes in how others treated him. Those who cared about him were compassionate, but others were indifferent or made snarky comments. The invitations to lunch stopped coming, as did those colleagues who would previously pop into his office to chat or

joke. Instead, those coworkers now just walked by his office. It hurt deeply.²

Mental health disorders need to be destigmatized. According to the World Health Organization, one in eight people live with a mental disorder. There are numerous types of mental health disorders, including anxiety, depression, bipolar disorder, schizophrenia, post-traumatic stress disorder, eating disorders, and developmental/cognitive disorders such as autism spectrum disorder (ASD) and attention deficit and hyperactivity disorder (ADHD). These disorders can range in severity of symptoms, and present challenges in daily functioning to those afflicted. Importantly, though, mental health disorders should *not* be used to automatically label a person as weak, crazy, or dangerous.

One of the most important resources that can help afflicted attorneys is the Americans with Disabilities Act (ADA), enacted in 1990. The ADA represented sweeping civil rights legislation protecting disabled individuals from discrimination. Though the ADA also promotes equal access and enjoyment of public services and places of public accommodation, one of its most important provisions is the protection against employment discrimination (Title I).

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Mental Health Support for Attorneys Through the ADA

The ADA applies to all public and private employers, including state and local governments, with 15 or more employees. The ADA also applies to applicants for employment. The law requires that a covered employer provide a reasonable accommodation to a qualified individual with a disability that enables the individual to perform the essential functions of the job, and to enjoy equal privileges and benefits of employment as non-disabled individuals.³

To be protected under the ADA, a disabled individual must have either a physical *or* mental impairment that substantially limits one or more major life activities. ADA jurisprudence takes an expansive view of what constitutes a disability, and most clinically recognized mental health impairments qualify as ADA-covered disabilities.

One of the most notable aspects of the ADA is the affirmative obligation of an employer to provide a reasonable accommodation to a disabled individual. This is a completely distinct requirement from other civil rights laws, which are usually framed merely in prohibitive language to not discriminate against individuals because of their race, sex, national origin, religion, or age. The ADA contains those same prohibitions but imposes an additional duty on an employer to work

cooperatively with its employee to achieve a suitable reasonable accommodation. This collaboration is known as the ADA interactive process.

A reasonable accommodation can take many forms, depending on the specific employee situation presented. Simply stated, a reasonable accommodation is a change or adjustment to the work environment that allows a disabled individual to perform his or her job. Common examples of reasonable accommodations include but are not limited to acquiring or modifying equipment/devices, job restructuring, modified work schedules, reassignment to a vacant position, modification of workplace policies, and leave.

Ordinarily, an individual must request reasonable accommodation before it triggers the employer's obligation to provide one. While employers are cautioned not to assume or regard someone as disabled, they are not free to ignore the known physical or mental limitations of an individual. This presents yet another challenge in how mental disabilities can be addressed in the workplace. Unlike a physical disability, which may be self-evident such as a person's difficulty in walking, mental impairments frequently do not present any obvious signs. Thus, it is incumbent upon the afflicted individual to advise his or her employer of the issue so that steps can be taken to assist. An individual's silence usually only exacerbates the problem.

For lawyers, and especially for those struggling with their mental health, a balance needs to be struck between professional obligations and the need for self-care. Despite the enormous demands placed on them, attorneys need to find time to achieve a proper work/life balance. This includes time away from work to do things like exercise, rest and recharge, spend time with their families, and participate in therapy, if needed. In the highly competitive world of lawyers, it is not uncommon to compare billable hours or who brought in a particular client or case. However, those boasts should not extend to how little time off was taken or who spent more time in the office.

Lawyers often view themselves as warriors, fighting for their clients with relentless fervor. At the same time, however, lawyers need to understand they are also human. They need time to take care of themselves, including the need to unplug from work. Taking a vacation is not much of vacation when you are constantly on your phone and laptop. It is also not a badge of honor to declare that you get only four hours of sleep nightly, or that you never take a day off, much less a vacation. Those declarations tend only to inspire feelings of self-doubt and inferiority in others who may feel guilty about their need for more sleep or time away from work.

A vacation, sabbatical, or a leave of absence, however, may only be a temporary solution to the larger issue. Regardless of whether you work as a government lawyer, in-house for a corporation, or in private practice, you need to partner with your organization's leaders to achieve the proper balance that will safeguard and promote your mental health. The ADA can assist lawyers in this regard. For example, billable-hour requirements may need to be re-examined. Administrative, non-client tasks may be reduced or reassigned. A modified work

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schedule, which may include a reduced workweek or the ability to work from home, may be a viable option.

Many employers do not like having to provide reasonable accommodation to employees under the ADA. Often, it is due to the need to make changes that may be seen as less than ideal or just different from how the employer would otherwise like. During the COVID-19 pandemic, for example, most lawyers were immediately forced to start working from home (WFH) during lockdown. While some thrived, others found that arrangement particularly stressful (among many other pandemic-induced stressors). One of the biggest challenges the WFH model presented for lawyers was the lack of boundaries between work and home life. Without an office to physically travel to and from, lawyers could work from the time they woke up until late evening. Without that traditional separation, work could become overwhelming.

Many employers disfavor WFH arrangements, largely because they feel they are less productive and detrimental to workplace culture. Before COVID, a WFH accommodation was rarely granted. However, the WFH option is now much more viable, because the pandemic demonstrated how it could be done, even if imperfectly. The ADA requires exploration of these types of alternatives.

For lawyers experiencing mental health challenges, they must speak up to explore possible solutions without fear of being labeled weak or incompetent. Law-firm and other organizational leaders also need to recognize that a lawyer's mental well-being is critical, because lawyers will not stay in a place that makes them sick or unhappy. A commitment to attorney mental health is a win-win situation for all.



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ENDNOTES:

1. 2023 *American Lawyer Magazine* and Law.com Compass Mental Health Survey of the Legal Profession.
2. Lukasik, Daniel T., *Prioritizing Mental Health and Well-Being in the Workplace is Evolving and Driving Change in the Legal Profession*, June 1, 2022, <https://www.law.upenn.edu/live/news/14831> (last visited Feb. 15, 2024).
3. 42 U.S.C. §12112(b)(5).

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