

LEGISLATIVE UPDATE

January 2017

EEOC Issues Informal ADA Guidance to Employees for Mental Health Conditions

This month the EEOC published new informal guidelines for employees with mental health conditions, advising them of their rights to a reasonable accommodation under the ADA. The publication is aimed at workers with major depression, post-traumatic stress disorder, bipolar disorder, schizophrenia, obsessive compulsive disorder, and other mental health conditions that if left untreated “substantially limit” the employee’s ability to concentrate, interact with others, communicate, eat, sleep, care for themselves, regulate their thoughts or emotions, or do any other “major life activity.”

The EEOC’s guidance serves as a reminder to employers and employees that the basic framework of the ADA is generally applicable to these employees, just as it would be for any qualifying physical condition. These include the right to privacy about their condition and the right to request a reasonable accommodation. Some examples of reasonable accommodations listed include:

- * Altered break and work schedule,
- * Quiet office space or devices that create

a quiet work environment,

- * Changes in supervisory methods (e.g., providing an employee with written instructions when typically only verbal instructions are provided),
- * Specific shift assignments,
- * Working from home, and
- * Paid or unpaid leave.



Employers should note that while they cannot rely on myths or stereotypes about mental health conditions, EEOC states that if an employer has objective evidence that a worker cannot perform the

essential duties of their position with a reasonable accommodation, or that the worker would create a significant safety risk, the worker can be rejected from that job. However, the EEOC advises that reassignment to an available position with essential job duties the worker can perform should be considered as an accommodation.

The EEOC’s guidelines can be found here: https://www.eeoc.gov/eeoc/publications/mental_health.cfm

New Year, New Wage

On January 1, 2017, Ohio’s minimum wage increased by \$0.05 per hour for non-tipped employees, from \$8.10 to \$8.15 per hour; and by \$0.03 per hour for tipped employees, from \$4.05 to \$4.08 per hour. The minimum wage increase only applies to Ohio employers with gross

receipts exceeding \$297,000 per year. Further, the state’s minimum wage does not apply to employees under the age of 16. Ohio employers with less than \$297,000 in gross receipts and those with employees under 16 are still required to pay the federal minimum wage, which remains \$7.25 per hour.

Court Denies Temporary Injunction of OSHA's Electronic Reporting Regulation

OSHA issued a final rule on May 11, 2016, requiring most employers to submit injury and illness data electronically. OSHA will publish this data on its public website with the intention to "nudge" employers to improve workplace safety. This new OSHA rule also contains **anti-retaliation provisions** which would effectively prohibit employers from utilizing certain safety incentive programs and automatic post-accident drug testing policies.

In July of 2016, several industry groups challenged the regulations in a lawsuit and also requested a preliminary injunction to halt enforcement of the anti-retaliation provisions pending a ruling on the merits of the case. On November 28, 2016, District Judge Sam Lindsay of the United States District Court for the Northern District of Texas, denied that request. However, Judge Lindsay did not address the merits of the case, and stated: "The fact that the court has denied injunctive relief requested by the Plaintiffs is not a comment or indication as to whether Defendants will ultimately prevail on the merits. This determination is left for another day." In other words, the employers and industry groups which filed the lawsuit may ultimately succeed in convincing the judge that OSHA does not have the authority to create a new remedy for employees who believe they have been retaliated against.

Therefore, **as of December 1, 2016, the anti-retaliation provisions of the rule are in effect.** Employers should take immediate steps to ensure safety incentive programs, drug testing policies, and injury reporting procedures are in compliance with the new rule.

Expanded Concealed Carry Impact Employers

On December 19th Governor Kasich signed into law Senate Bill 199, which limits employers', among others, ability to ban entirely from their premises properly licensed conceal carry weapons. Under the new law, which will take effect 90 days after it was signed by the Governor, employees who have a properly licensed conceal carry permit may keep their firearm and ammunition in their personal vehicle, so long as: the employee is physically in their car, or if they are out of the car, the firearm and all ammunition is in a locked container or compartment within the car; and the car is in a location it is otherwise authorized to be. The new law also limits liability to employers and businesses for damages or injuries that occur because of a firearm stored in the manner allowed, or stolen from the premises.

In addition, the new law eliminates conceal carry license requirements for active duty service members who have completed sufficient firearm training. The new law also repeals Ohio's current ban on carrying concealed weapons in day care centers, airport terminals, school safety zones, and certain government buildings.

The full text of the new law can be read here:

search-prod.lis.state.oh.us/solarapi/v1/general_assembly_131/bills/sb199/PH/04?format=pdf

Mark S. Barnes
mbarnes@bugbeelawyers.com

Carl E. Habekost
chabekost@bugbeelawyers.com

Dana R. Quick
dquick@bugbeelawyers.com

Tybo Alan Wilhelms
twilhelms@bugbeelawyers.com

BUGBEE
& CONKLE

www.bugbeelawyers.com