

NEW PSYCHIATRIC STANDARDS COULD MAKE EMPLOYERS CRAZY

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The American Psychiatric Association (APA) first published its Diagnostic and Statistical Manual (DSM) in 1952. The DSM, and its subsequent revised editions, have since provided the most authoritative guidance on mental health disorders for health care practitioners, governmental agencies, and state and federal courts. The APA published the fourth edition of the DSM in 1994 (DSM-IV), and made additional minor “text revisions” in 2000.

The APA plans to publish a fifth edition of the DSM in May 2013. The proposed DSM-5 could significantly expand some existing psychological disorders and add several new ones. Some critics predict that the DSM-5 will lead to the over-diagnosis of mental disorders, which could cause significant problems for employers.

For example, current drafts of the DSM-5 would add a controversial new disorder. Specifically, Attenuated Psychosis Symptoms Syndrome involves a combination of low-level psychotic symptoms, distress, and social dysfunction occurring as infrequently as once a week. The DSM-5 permits a diagnosis of Attenuated Psychosis Symptoms Syndrome if the symptoms cause sufficient distress and disability to trigger the patient to seek psychological help. The APA’s internal research estimates that a great majority of current patients that would satisfy the proposed criteria for Attenuated Psychosis Symptoms Syndrome would not receive a diagnosis under the DSM-IV.

Official recognition of the proposed Attenuated Psychosis Symptoms Syndrome could create problems for employers. In particular, the diagnosis of employees with Attenuated Psychosis Symptoms Syndrome could result in enormous increases in (1) accommodation requests under the Americans with Disabilities Act (ADA); (2) leave requests under Family Medical Leave Act (FMLA); and (3) claims that work-induced stress caused compensable workers’ compensation injuries.

Another proposed new disorder under the DSM-5 may affect how employers deal with older workers. In the proposed DSM-5, Mild Neurocognitive Disorder involves a “minor cognitive decline” that “concerns” the patient and requires “greater effort, compensatory strategies, or accommodation” to perform activities of daily living. The Age Discrimination in Employment Act (ADEA) protects employees from discrimination based on age, but does not currently

require employers to accommodate age-related cognitive limitations under either the ADEA, the FMLA, or ADA. An official recognition of Mild Neurocognitive Disorder in the DSM-5 could cause employers to grapple with accommodation requests from many older employees – particularly as more “Baby-Boomers” age.

The draft DSM-5 would also significantly expand a number of existing disorders. For example, the draft DSM-5 would remove the “bereavement exclusion” from the definition of Major Depressive Disorder, and could transform bereavement or grief into a diagnosable disorder. Thus, employees’ bereavement or grief could become a condition that employers must accommodate under the ADA and FMLA.

Current drafts of the DSM-5 also remove the exclusion of “deviancy” – whether political, religious, or sexual – from the definition of Mental Disorder, if the deviancy is not the “primary” cause of the disorder. Because mental health professionals could differ about what constitutes a “primary” cause, critics warn that the proposed revision may result in “deviancy” becoming equated to mental illness. The ADA specifically excludes most *sexual* deviants from its legal protections. With the proposed revision, however, a sociopolitical deviant (such as a neo-Nazi or virulent racist) could potentially seek accommodations under the ADA. Such accommodation requests for sociopolitical deviants could potentially ask employers to violate other statutory non-discrimination mandates involving race, ethnicity, national origin, gender, age, political affiliation, sexual orientation, religion, marital status, or veterans’ status.

As currently proposed, the DSM-5 will almost certainly increase the number of employees with diagnosed disabilities that employers would have to accommodate under the ADA. The proposed DSM-5 will likely increase the number of employees with “serious health conditions” that could request leave under the FMLA. Moreover, the proposed DSM-5 will likely increase the mental health conditions constituting compensable injuries under workers’ compensation laws. Thus, as currently proposed, the adoption of the DSM-5 in May 2013 could open a Pandora’s Box of new accommodation, leave, and injuries issues for employers to address.