

## EEOC RELEASES GUIDANCE ON MENTAL HEALTH CONDITIONS

*The Equal Employment Opportunity Commission (EEOC) has released informal guidance to advise employees of their legal rights in the workplace with regard to depression, posttraumatic stress disorder (PTSD), and other mental health conditions. Although the guidance is geared toward employees, it provides insight for employers on the EEOC's position on employee protections under the Americans with Disabilities Act (ADA).*

### Guidance Covers Broad Range of Topics

The guidance is provided in a question-and-answer format and covers the following areas:

**Discrimination.** The EEOC advises that it's illegal for employers to discriminate against an individual because he has a mental health condition. The guidance explains the exceptions for individuals who are unable to perform their job duties. The EEOC says you can't rely on myths or stereotypes about a mental health condition when making an employment decision but instead must base your decision on objective evidence.

**Privacy/Confidentiality.** The guidance explains that employees and applicants are entitled to keep their condition private and that employers are permitted to ask medical questions in four situations only:

1. When an individual asks for a reasonable accommodation;
2. After a conditional job offer has been extended but before employment begins (as long as all applicants in the same job category are asked the same questions);
3. For affirmative action purposes – and a response must be voluntary; or
4. When there is objective evidence that an employee may be unable to do his job (or may pose a safety risk) because of a medical condition.

When medical information is disclosed, you must keep the information confidential – even from coworkers.

**Job Performance.** Reasonable accommodation is the focus of the EEOC's guidance in this area. It describes a reasonable accommodation as a change in the way things are done at work and gives the following examples:

- Altered break and work schedules (e.g., scheduling work around therapy appointments);
- A quiet office space or devices that create a quiet work environment;
- Changes in supervisory methods (e.g., written instructions from a supervisor who doesn't usually provide them);
- Specific shift assignments; and
- Telecommuting.

**“Substantially Limiting” Condition.** The guidance points out that a condition doesn't need to be permanent or severe to be substantially limiting under the ADA. A condition that makes activities more difficult, uncomfortable, or time-consuming to perform (when compared to the general population) may be substantially limiting.

And even if symptoms come and go, the guidance notes that “what matters is how limiting they would be when the symptoms are present.” It also notes that mental health conditions like major depression, PTSD, bipolar disorder, and obsessive compulsive disorder “should easily qualify.” According to this section, you shouldn't conduct an extensive analysis of whether a condition qualifies as a disability. Instead you should focus on complying with the ADA's antidiscrimination and reasonable accommodation requirements.

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**Reasonable Accommodation.** The guidance advises employees that they may ask for a reasonable accommodation at any time but that it's generally better to ask before any workplace problems occur because employers aren't required to excuse poor job performance – even if it's caused by a medical condition or the side effects of medication.

The guidance notes you may ask an employee to put an accommodation request in writing and may ask her healthcare provider for documentation about the condition and the need for an accommodation. The EEOC suggests that employees bring to their medical appointment a copy of the EEOC publication “The Mental Health Provider’s Role in a Client’s Request for a Reasonable Accommodation (available at [www.eeoc.gov](http://www.eeoc.gov)).

The guidance adds that an unpaid leave may be a reasonable accommodation if the leave will help the employee get to a point where she can perform the job’s essential functions. And if the employee is permanently unable to do her regular job, the guidance explains that she can request reassignment to another job if one is available.

**Harassment.** The EEOC advises employees to tell their employer about any harassment if they want the employer to stop the problem. The guidance recommends that employees follow your reporting procedures and explains your legal obligation to take action to prevent future harassment.

### **Bottom Line**

Although the EEOC’s guidance is directed specifically at employees and their healthcare providers, you may also benefit from it for several reasons. First, the document makes clear that you must rely on objective evidence in making employment decisions and requesting medical information from employees – myths, stereotypes, and rumors are insufficient. In addition, given the document’s focus on confidentiality, you should insure you have in place a process guaranteeing the appropriate treatment of information regarding employees’ mental health conditions.

Also, the guidance highlights the significance of healthcare provider documentation in accommodation requests. Indeed, documentation from a healthcare provider often serves as a catalyst for the interactive dialogue between you and the employee that is required by the ADA.

Finally, the guidance underscores the importance of training supervisors. Supervisors must be able to identify an accommodation request and understand your obligations once a request is received. They also must manage performance and conduct issues that may be caused by employee’s mental health conditions – a difficult task that can be accomplished with proper education and guidance.

The EEOC guidance is available online at [www.eeoc.gov/laws/types/disability.cfm](http://www.eeoc.gov/laws/types/disability.cfm).

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## **RISK SERVICES**

### **THE NDIRF “WHY”**

I recently attended a conference hosted by the Association of Governmental Risk Pools (AGRIP), of which the NDIRF is a member. During one of the educational sessions at the conference, the speaker asked everyone to come up with the reason their pool exists, or their pool’s “why,” and also give an example of a time when their pool’s “why” was reinforced through their operations. Having been at the NDIRF for only about 2½ years, I was not around to witness commercial insurance carriers eliminate the availability of coverage for North Dakota’s local governments in the mid-1980s, which led to the creation of the NDIRF. So, without

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## RISK SERVICES

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having the original story of why the NDIRF exists in my back pocket, I thought of the recent protest activity in North Dakota and what our local law enforcement was put through during the months-long ordeal. Stemming from that activity have been lawsuits with various allegations against our local law enforcement. Watching live feeds of the protest activity and hearing first-hand accounts of what was happening, I cannot imagine being in their shoes. To then have to worry about the lawsuits resulting from that activity must be overwhelming. That is where the NDIRF comes in, defending claims or suits against NDIRF members and their employees, volunteers, or elected officials, and providing coverage for damages. Through coverage documents developed specifically for local government in North Dakota, the NDIRF is able to provide the protection needed so those who protect and serve us through local government can do so with peace of mind, knowing they have the NDIRF standing behind them. That is the NDIRF “why.”

Also resulting from the protest activity was a reminder of the great sacrifice made by our local law enforcement and emergency services personnel to keep all of us safe. Thank you to all of you who serve through local government, especially those who serve in the roles of law enforcement and emergency services.

If you have any questions, concerns, or comments about NDIRF coverage or services, please do not hesitate to contact me, Brennan Quintus, NDIRF Risk Services Manager, at 701-751-9105 or at [Brennan.Quintus@NDIRF.com](mailto:Brennan.Quintus@NDIRF.com). ■

## FROM THE CEO

### ANNUAL MEETING HIGHLIGHTS



**Burdell Johnson**

#### BOARD ELECTIONS

NDIRF members gathered in Bismarck on May 10th for the company’s 2017 annual meeting. One of the responsibilities of Fund members attending the meeting (and those members who attended by proxy) was the election of directors to the NDIRF Board.

Successful candidates in 2017 were Atwood Township Supervisor Burdell Johnson, elected by “Others” members; and Lewis and Clark School District Board Member Mike Lautenschlager, elected by “Schools” members. Congratulations!



**Mike Lautenschlager**

#### FINANCIAL REPORT

Another important function of the Annual Meeting is to inform members of the financial condition of the business. Reports for the most recent full year of operation (2016) were presented by NDIRF staff and the report of the Fund’s independent financial auditor, Eide Bailly LLP, indicated an unmodified opinion (clean bill of financial health). All NDIRF members receive a copy of the NDIRF Annual Report, which goes into details regarding the Fund’s operations and results, and includes the full report of the independent financial auditor. ■



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### **SIZZLING SUMMER SEMINAR – HOT TOPICS IN HUMAN RESOURCES**

Four regional Human Resource training sessions for local governments will be held throughout the state in June. Registration opens at 9:30 a.m. and the session begins at 10:00 a.m. and ends at 3:00 p.m.

The training sessions are covering hot topics from the ND Labor Department, reviewing the HR Checklist and Interviewing 101 techniques. Labor Commissioner Michelle Kommer will address a range of emerging issues impacting employers including exempt/non-exempt overtime, labor department claims and changing IRS regulations. Kathy Hogan will introduce the new HR Checklist self-assessment tool for local governments and show various methods of how to use it. The session will conclude with a focus on interviewing and selection process for hiring. Chuck Horter will outline key issues in interviewing do's and don'ts. Then the group will assess various interviewing pitfalls and scenarios. Bring your questions and key issues to the session.

Sessions will be held:

June 7	Bismarck	Comfort Inn
June 14	Williston	TrainND - Williston State College
June 28	Devils Lake	Lake Region State College
June 29	Fargo	Dakota Medical Foundation

Registration fee is \$50.00 which includes materials, lunch and the session. For a detailed agenda and to register go to [www.hrndgov.org](http://www.hrndgov.org). ■

## *Mark Your* **CALENDAR**

Sept 2017

- 21: NDIRF Board of Directors Meeting  
NDIRF offices, Bismarck
- 28-30: NDLOC Annual Conference  
Fargo Ramada Suites, Fargo

Oct

- 8-11: NDACO Annual Conference  
Bismarck Events Center, Bismarck