

The Latest Trend in Lawsuits Against Employers Stressed-Out Employees

by ANTHONY KUCHULIS of Barran Liebman LLP

The manager of a small convenience store had been a reasonable employee for years, but he changed over time. One day, he intentionally threw a jar on the ground causing it to shatter and spread a layer of jam on a previously clean floor. He yelled at a clerk to clean the mess. After numerous similar incidents of bullying and outbursts, the manager was diagnosed by a psychologist as experiencing high levels of work stress, among other things, which was determined to be a disability.



to the level of a protected legal disability, reasoning that stress and anxiety are mental impairments that can substantially interfere with an employee's daily ability to function. Employers should also be aware that otherwise garden-variety stress and anxiety can be a sign of a more significant issue, such as post-traumatic stress disorder, chronic panic attacks or insomnia. Stress can also exacerbate or be secondary to other medical conditions that may qualify as a disability or serious medical condition. For example, employees in several cases have argued that stress at work worsened their Crohn's disease symptoms, which in turn inhibited their ability to do their job.

After taking a lengthy leave to treat his stress, he sued his employer for denying him reemployment at the store alleging that he had been discriminated against on the basis of his disability. That was a claim in California 20 years ago. At the time, it was novel; today it is not. Citing stress as the basis for a claim under the Americans with Disabilities Act (ADA) and equivalent state laws is on the rise, and vigilant employers must be aware of the legal issues and circumstances which give rise to these claims to avoid being caught in this new trend.

When Stress and Anxiety is a Legal Issue

Stress in the form of annoyances, deadlines and pressure is often part of any job and will not invoke a legal obligation for the employer to intervene on the employee's behalf. On the other hand, pervasive stress that appears to limit an employee's ability to function either at work or home may be a protected disability under both state and federal law. Under the ADA and Oregon law, an employee is legally disabled if he or she has a physical or mental impairment that substantially limits one or more major life activities. Employers may not discriminate against an employee, either in the terms or conditions of employment on the basis of a real or perceived disability.

Recently, courts have regularly concluded that stress and anxiety, under certain circumstances, can rise

As an employer, when an employee requests an accommodation or you are aware of an employee's disability, including one relating to stress, you must engage the employee in an interactive process to determine what reasonable accommodations can be made to allow the employee to perform his or her job. The process should be a back-and-forth that explores the employee's work challenges and how those issues can be resolved without creating an undue burden on the business. This conversation should be held outside the presence of peers or co-workers as it could quickly turn to the issue of a protected and sensitive underlying medical condition. Importantly, employers are not required to accept an employee's accommodation request, even if the request is from a treatment provider, such as a doctor or a psychologist. Rather, the employer has the right to suggest an alternative accommodation that is equally effective to accomplish the desired result. For example, courts have held that employers are not required to transfer employees because they do not get along, and that employees are not entitled to a new boss simply because their current supervisor stresses them out.

Employers are not required to allow employees to smoke medical marijuana (or the recreational

variety), even on their own time, to accommodate a health condition like stress, as marijuana is still illegal under federal law.

Though disability laws are the most important when it comes to determining whether and how to accommodate stress issues, employers should also consider the applicability of protected leave laws. State and federal protected leave laws (OFLA and FMLA, respectively) may provide up to 12 weeks of unpaid time off in the event of a "serious health condition," which may include stress or anxiety if those symptoms prevent the employee from performing an essential job function for more than a couple days. In addition, Oregon's statewide sick leave law allows employees to take time off in hourly increments to care for a physical or mental health condition, which would likely include an employee's stress symptoms.

How to Avoid Stress-Related Discrimination Claims

Employers should always consider whether an employee complaining of stress is merely venting or disclosing a disability which may entitle him or her to an accommodation or protected leave. If you have any concerns about an employee's job performance, the best practice is to engage him or her directly, outside the presence of peers, about your concerns. The goal should be to determine what kind of accommodation, if any, would allow the employee to resume his or her peak work performance. Perhaps most importantly, you should carefully consider—and maybe even speak with employment counsel—disciplinary actions against an employee that appears constantly stressed out to understand the whole situation and the potential legal issues involved.

Anthony Kuchulis is an attorney with Barran Liebman LLP. He advises and represents employers in regard to a wide range of employment and labor law issues. Contact him at 503-276-2199 or akuchulis@barran.com