

EEOC's Latest Guidance On Mental Health Accommodations Adds Little

January 31, 2017 | [EEOC, Labor And Employment](#)



William A. Nolan
Partner

Employee mental health conditions often present some of the more challenging disability accommodation situations. While no less real and potentially debilitating, we can't *see them*, and some of them may be less predictable. (Include fibromyalgia as another disability in this category.) Mental health issues may also be stigmatized in ways that other health issues are not, presenting challenges in managing the conduct of employees other than the employee seeking accommodation. Thus, even the most well-meaning and enlightened supervisors and colleagues may confront challenging scheduling and other issues. So, when we saw that the EEOC was issuing guidance, we hoped for some useful FAQs and hypotheticals that would be helpful to employers and employees alike. No such luck. The [December guidance](#) is brief and utterly generic, offering little that is specific to mental health conditions. So as not to totally disappoint, note that the following specific potential accommodations were mentioned in the guidance:

- Altered break and work schedules(e.g., scheduling work around therapy appointments)
- Quiet office space or devices that create a quiet work environment
- Changes in supervisory methods(e.g., written instructions from a supervisor who usually does not provide them)
- Specific shift assignments
- Permission to work from home

Employers should also be aware of the EEOC's [earlier guidance](#) directed to mental health providers (still fairly basic) and, while now quite old, the much more detailed [1997 guidance](#) on psychiatric disabilities, much of it still useful. [Equip for Equality's undated piece](#) also provides useful information. Certainly there are many other good resources online. As always with accommodation situations, employers:

- Will likely benefit from good [job descriptions](#)
- Have the right to obtain analysis from medical providers regarding the employee's ability to perform the job and any limitations on that ability
- Must recognize that it is hard to have hard and fast rules for accommodations; each situation is different

RELATED PRACTICE AREAS

EEO Compliance
Labor and Employment

RELATED TOPICS

Disability Accommodation
Equal Employment Opportunity Commission (EEOC)
Employers
mental health

- Should encourage supervisors not to create unprivileged written communications on the issue; these communications often memorialize feelings of frustration that will likely not be helpful to the employer in later legal proceedings
- Recognize that the fact that supervisors and colleagues may be frustrated do not relieve you of accommodation situations
- Should consider consulting with counsel

Following these basic guidelines will help employers work through tough situations so as to benefit from good employees who are able to contribute, and humanely address impaired employees who can't.