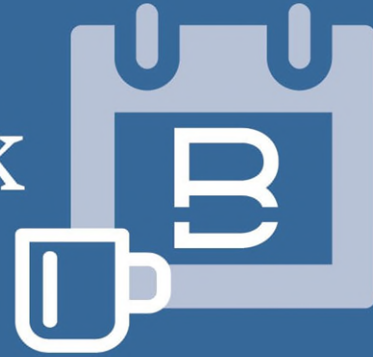


# The Work Week

Bassford Remele Employment Practice Group



**June 12, 2023**

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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## **Managing Mental Health in the Workplace**

These days, discussions around mental health may be as common in the public sphere as they are among friends or loved ones. Exacerbated by the COVID pandemic, and, some might argue, the demands of the digital age, mental-health struggles touch across all strata of society and all age groups. The Star Tribune recently reported on a surge in mental-health illness in Minnesota. Last year, Governor Tim Walz signed into law a \$92.7 million package for mental-health initiatives, and the State of Minnesota launched a new mental-health hotline to respond to increased demand.

Companies and organizations have responded to growing mental-health needs by offering employee-wellness programs. But aside from these private initiatives, there are also longstanding federal employment laws that cover mental health that employers must adhere to. Both the Family Medical Leave Act (“FMLA”) and the American Disabilities Act (“ADA”) may entitle employees with mental-health issues, like depression or anxiety, to medical leave or other accommodations.

Under the FMLA, an employer is required to provide up to twelve weeks of unpaid leave to an employee with a “serious health condition.” This can cover any chronic condition, whether physical or mental, so long as it requires treatment by a health-care provider at least twice a year and recurs over an extended period of time.

Under the ADA, an employer may be required to provide an employee with a “qualified disability” accommodations (such as a flexible workplace, reduced hours, breaks, or even finite unpaid leave) to help them perform their jobs. The ADA defines a “qualified disability” broadly as a physical or mental impairment that substantially limits a “major life activity.” This may include any number of mental-health conditions that affect things like the ability to concentrate, interact with others, communicate, eat, sleep,

care for oneself, or regulate thoughts or emotions. Notably, ADA guidance specifically lists major depression as a qualifying disability.

### **How should an employer handle leave and accommodation requests for mental-health reasons?**

Generally, employers should handle these requests no differently than they would requests that are prompted by physical illnesses.

If an employee requests a leave of absence, employers can start by determining whether the employee's condition qualifies as a "serious health condition" or a "qualified disability," or both, and verify that the employee meets the procedural hurdles of the law that applies. For example, the FMLA requires an employee to have been employed by the employer for at least 12 months and to have worked for the employer for at least 1250 hours to be eligible. Employees will also need to provide a medical certification form from their doctor to prove that their leave is necessary.

If an employee requests an accommodation, the ADA requires employers to engage in an "interactive process," or a good-faith dialogue regarding the employee's needs and expectations. Employers are required to provide accommodations, even unpaid leave, so long as they're reasonable and don't cause the employer significant challenges or costs. Depending on what information the employee provides, employers may request relevant medical documentation to substantiate the request.

### **What if an employee seeks help for a mental-health issue but makes no specific requests?**

Technically, any conversation around mental health or any other medical issues have to be initiated by the employee. In fact, employers should generally steer clear of asking any medically related questions of employees unless they directly pertain to their job duties. But at the same time, the ADA mandates that employers accommodate employees for any "known disability." In other words, employers may be responsible for providing flexibility and leniency to an employee even if they are never put on formal notice of a disability or accommodation request. And when an employer has reason to believe an employee may be suffering from a disability, including mental-health conditions, the employer may still have a duty to engage in the interactive process under the ADA.

Consider this issue in the context of performance reviews. Employers aren't required to excuse poor job performance due to an employee's mental health. But, if an employee discloses that a mental illness is affecting their job performance, the employer is expected to engage in a dialogue with the employee to figure out how the disability impacts their performance and determine potential solutions moving forward.

Once a leave or accommodation is granted, employers will have additional responsibilities around record keeping, documentation, and communication with employees, and return to work issues. They may have to handle nuanced requests to substitute employer-provided PTO and sick days for unpaid leave, or for intermittent leave. The FMLA and ADA may also be complicated by new sick leave and paid family leave laws at the state level, [like Minnesota's Paid Family Medical Leave Act](#), which goes into effect in 2026 and provides paid leave for mental impairments. Employers should be aware that there are overlapping leave and accommodation laws that cover both the physical and mental health needs of employees and plan accordingly.

At Bassford Remele, we regularly provide advice and counsel to employers as they navigate the murky waters surrounding reasonable-accommodation requests and interactive-process obligations. Feel free to reach out to our employment team if ever a need arises!

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