



# Mental Health and ADA Accommodations Workshop

Presented by: Ann Kuzee and Paula Allen  
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Ann Kuzee  
Senior Legal Counsel, US ADM  
TELUS Health



Paula Allen  
Global Leader and VP, Research&Insights  
TELUS Health



## Disclaimer

The materials and information in this presentation are prepared for informational purposes only. This is not legal advice and is not intended to create an attorney-client relationship. Before taking any action based on any of the materials or information presented, you should consult your organization's attorney.



# Mental Health Index Data

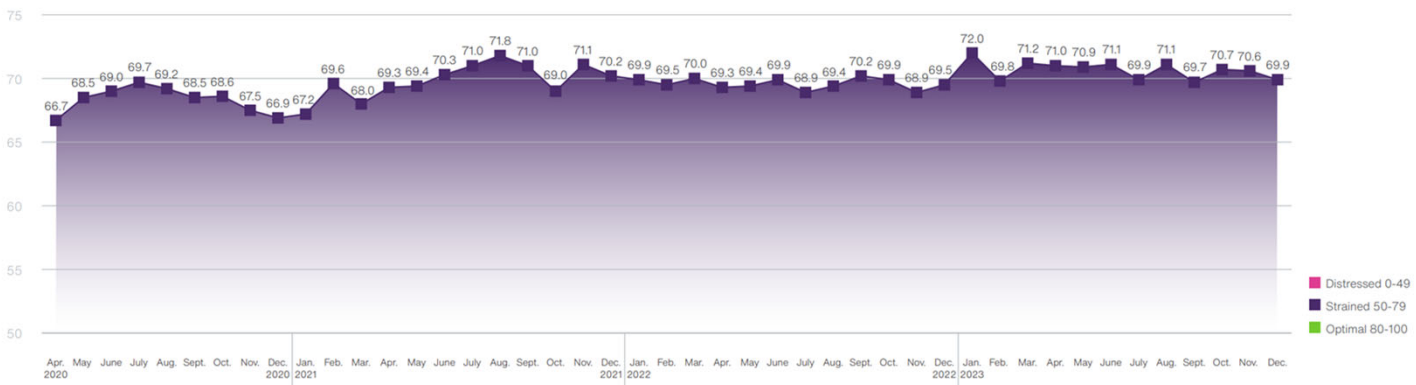




# Mental Health Index Data

Dec 2023  
69.9

Apr 2020  
66.7



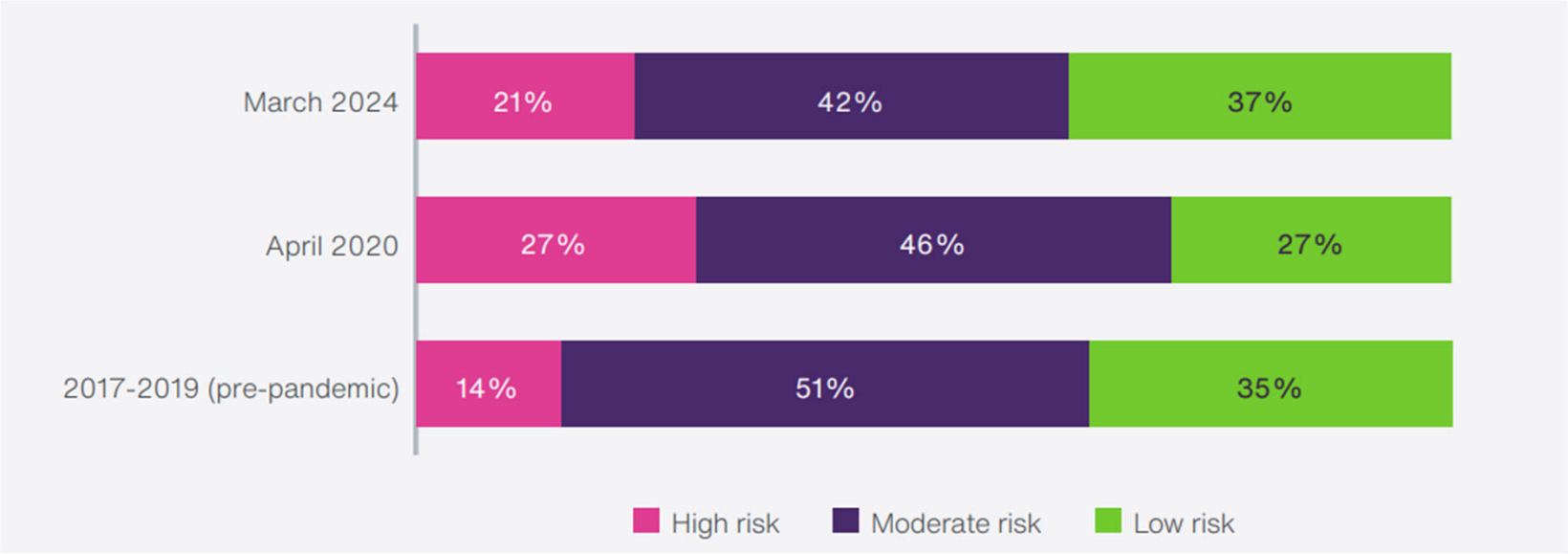


## Mental Health Index Data – Mental Health Risk

In December 2023, 23 percent of workers in the United States have a high mental health risk, 42 percent have a moderate mental health risk, and 34 percent have a low mental health risk. Nearly four years since the launch of the Index in April 2020, there has been a four percent decrease in high-risk workers and a seven percent increase in low-risk workers.



# Mental Health Index Data – Mental Health Risk







## Workers consistently have the greatest challenges with **anxiety and isolation.**

- Anxiety and isolation have been **the worse sub-scores in the Mental Health Index.**

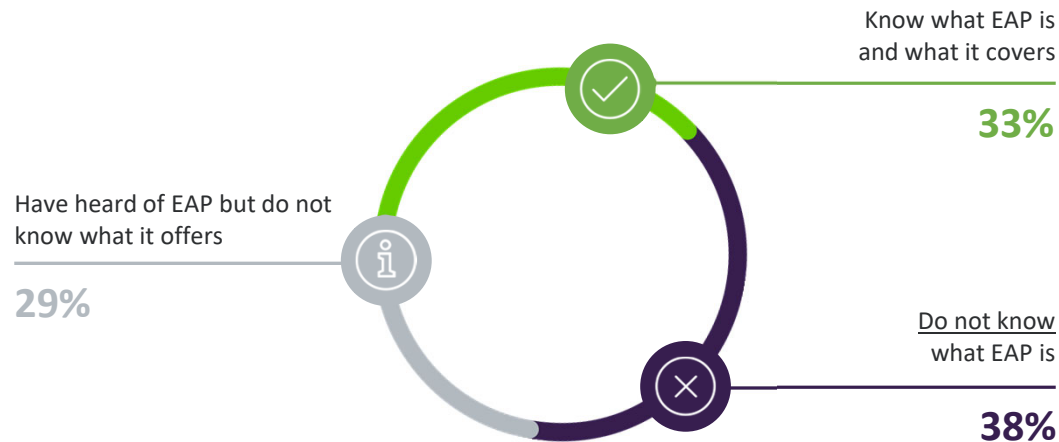
Mental Health Index Sub-scores	March 2024
Anxiety	65.1
Isolation	68.1
Work productivity	71.0
Depression	71.6
Optimism	72.3
Financial risk	75.8
Psychological health	77.6







## Only 1 in 3 (33%) know what EAP is and what it covers.



4 in 10 workers do not know what EAP is / have not heard of EAP



# There is significant mismatch of medication for mental health.



Over 1 in 4 workers (26%) report taking medication for a mental health issue.



More than half (56%) indicate **the first** prescription was not effective.



Three in ten (29%) of those workers **tried more than a year** to find the right medication.



## Mental Health Model

- 1) **Before:** Paying Attention, availability to EAP programs
- 2) **During:** Risks; Maintaining a relationship
- 3) **After:** Approach to return to work



## Organizational Goal: Create the Right Workplace Climate

- The organizational climate is the pervading feeling or emotions associated with the particular work environment.
- Climate is influenced by leadership, the type of language used in interactions, and can change often based on the quality of interactions and the types of events.
- The organizational climate is your perception of your work environment.
- The strategies leadership uses to motivate, accessibility to company information, daily obstacles to work performance, structure of the organization, and employee recognition impact company climate.



# Mental Health and ADA Accommodations

## Workshop Scenario 1





## Scenario 1: Part 1 of 4 Mental Health and the ADA

- Sarah was hired as an Accounting Analyst and Specialist approximately 11 months ago. Most of Sarah's duties involve overseeing her employer's financial statements and budgets. She spends significant time working with financial spreadsheets, using financial systems, and communicating financial information through various means but mostly through email.
- Sarah turns down invitations with co-workers to go to lunch, eats her lunch by herself, and tries to avoid interactions with others.
- When she is with groups of people, she has a hard time concentrating on the interaction. She is often at a loss of words, starts to sweat, and stutter. After these encounters, she replays these interactions over-and-over again in her mind and thinks about how stupid she sounded.
- As a child she thought she was just shy but was later diagnosed with social phobia and social anxiety disorder.
- Her job performance has been regarded as excellent. At the end of her probation, she scored the highest score of a 5. Her attention to detail and accuracy in numbers showed near perfection.
- Sarah's job description includes that she must present the organization's quarterly and year-end financials to the Executive staff, Board Members and other select top Administrators. These presentations are usually done in the board room, take 1 to 1-1/2 hours, and she must answer any questions they may have.



## Scenario 1: Part 1 of 4 – Workshop Questions Mental Health and the ADA

1. What are the health conditions that Sarah has, how do they impact her job, and do they qualify as a disability under the ADA?
2. What are the essential functions of Sarah's job?
3. Are the quarterly and year-end financial reports to the Executive staff, board members, and select top administrators lasting approximately 1 hour each an essential function of the job or a marginal job duty (i.e., a non-essential task, minimal, incidental, not as important)?





## Scenario 1: Part 2 of 4 Mental Health and the ADA

- Sarah's health care provider recently changed her medication to address increased fears of hopelessness and worthlessness triggering her to isolate herself more frequently. Her overall symptoms continued to include social anxiety, depression, and ruminations.
- Following a Thanksgiving Day event with her family that didn't go well, Sarah began experiencing increased symptoms of social anxiety, depression, and ruminations. This resulted in her having more difficulties concentrating at work, and she incorrectly entered some financial numbers.
- To further complicate Sarah's condition, her employer sent out notices that there would be a holiday gift exchange and potluck for all employees on December 20, and they were looking forward to having EVERYONE participate. Sarah knew that due to her health conditions she needed to talk to her supervisor about being excused from this event, but she was struggling with what to say.
- Sarah didn't immediately have time to address the holiday notice with her supervisor, when Sarah's manager began arranging meetings with her to discuss the 4<sup>th</sup> quarter and year-end financial presentation scheduled for January 30.



## Scenario 1: Part 2 of 4 – Workshop Questions Mental Health and the ADA

1. Under the ADA, what must be communicated by Sarah to request an accommodation?
2. If Sarah were to share her fears of hopelessness and worthlessness with her supervisor and ask for accommodations, what should her supervisor say or do, or what other actions might her supervisor take?
3. Do employers need to make accommodations for disabilities that are exacerbated by nonwork-related situations like Sarah's Thanksgiving Day family event?



## Scenario 1: Part 3 of 4 Mental Health and the ADA

- Sarah meets with her manager on November 29. At this meeting, Sarah informs her manager that she is struggling with anxiety and has mental health conditions that make it difficult for her to interact with others. She goes on to produce a medical document from her physician that explains that due to her social phobia and social anxiety disorders, she will need the following accommodations:
  - To have a leave of absence from December 4 through December 8, to recover (i.e., bed rest, counseling) from the increased anxiety she has been experiencing and continues to experience.
  - To not participate in the December 20<sup>th</sup> gift exchange and potluck, and to work from home on that day.
  - To not present the 4<sup>th</sup> quarter and year-end financial reports on January 30.
- Sarah's manager appeared to be very uncomfortable during the meeting and concluded the meeting by saying that she'd get back with her and left quickly.



## Scenario 1: Part 3 of 4 – Workshop Questions Mental Health and the ADA

1. Has Sarah requested an ADA accommodation? If so, what accommodation(s) did she request?
2. What do you think Sarah's supervisor should have said about Sarah's medical condition?
3. What are some things that Sarah's manager could have said at the conclusion of the meeting to close it out more effectively?



## Scenario 1: Part 4 of 4 Mental Health and the ADA

- On December 2, Sarah's manager meets with Sarah to inform her of the following decisions, which Sarah's manager has made with the assistance of Human Resources:
  - She may not have the leave from December 4 through December 8. They do not see the need for this time off because her job is such that it provides sufficient quiet time and seclusion.
  - She does not need to participate in the December 20 gift exchange and potluck, but she can't work from home. They believe her office is sufficiently secluded from the area where the party will take place.
  - She must present the 4<sup>th</sup> quarter and year-end financial reports on January 30, because these job duties are listed in her job description, they deem them to be essential functions of her job, and they are not required to relieve an employee from doing an essential function of their job.



## Scenario 1: Part 4 of 4 – Workshop Questions Mental Health and the ADA

1. What did Sarah's employer not do that they should have done prior to making any decisions on the accommodations being requested by Sarah?
2. Should Sarah's leave request from December 4 through December 8 been granted as an ADA accommodation?
3. Should Sarah have been allowed to work from home on December 20, the day of the employee holiday party?
4. Are the 4<sup>th</sup> quarter and year-end financial report presentations an essential function of Sarah's job?
5. What should Sarah's employer have discussed with her before mandating that she present the 4<sup>th</sup> quarter and year-end financials?



# Mental Health and PWFA Accommodations

## Workshop Scenario 2







## Scenario 2: Part 1 of 4 Mental Health and the PWFA

- Emily has been successfully managing depression with medications for several years while working as a manufacturing quality auditor for her employer. Without the medications, Emily becomes depressed and experiences feelings of pessimism, irritability, decreased energy, and decreased sleep. However, the medication she had been prescribed allows her to effectively manage through these symptoms.
- Emily is now 6 months along in her pregnancy. This is her first child, and she is very excited about the upcoming birth, but she is very anxious about it because she has previously experienced a miscarriage.
- When she became pregnant, her physician took her off her depression medications due to the risks they posed during pregnancy. Adequate medication substitutes were not available. Shortly after, Emily began to experience increased fatigue, irritability, and decreased energy.
- Emily informed her manager that she would need time off related to her pregnancy to attend therapy appointments on Monday and Wednesday of each week through the remaining term of her pregnancy for her depression. Her shift is from 8 to 5 pm Monday through Friday. Her appointment time is from 8 am to 9 am, and she will return no later than 9:30 am.



## Scenario 2: Part 1 of 4 – Workshop Questions Mental Health and the PWFA

1. Would Emily's depression condition, prior to her pregnancy, meet the definition of disability under the ADA?
2. Is Emily's depression condition exacerbated by her pregnancy covered under the PWFA?
3. Does Emily's request for an accommodation to attend therapy appointments for her depression meet the requirements for protection under the PWFA?



## Scenario 2: Part 2 of 4 Mental Health and the PWFA

- Emily's manager notified her that they will allow her to attend her therapy appointments as requested through the remaining term of her pregnancy in accordance with the PWFA.
- As Emily's pregnancy continues, she has become very concerned about falling in the parking lot because of decreased mobility due to her pregnancy and because of large amounts of snow and ice accumulation that had fallen at the end of November. The thought of losing another baby has triggered increased depression symptoms.
- Emily finally brought this concern to the attention of her supervisor and asked that she be provided a parking space next to the building.



## Scenario 2: Part 2 of 4 – Workshop Questions Mental Health and the PWFA

1. Under the PWFA, was Emily’s employer required to engage in the interactive process?
2. Under the PWFA, should Emily’s employer provide her with a parking space next to the building?
3. Should Emily’s employer require her to provide a doctor’s note stating that she should be given a parking space next to the building?



## Scenario 2: Part 3 of 4 Mental Health and the PWFA

- Emily is now 30 days away from her expected date of delivery. She provides medical documentation to her manager and requests 12 weeks of leave.
- Emily's manager instructs Emily to report her leave request to the third-party leave administrator used by the employer and tells Emily that she doesn't think Emily qualifies for FMLA because she has not been employed long enough and there is no applicable state leave law or employer leave program with job protection.
- Emily has only been employed for 7 months and is therefore not eligible for FMLA.
- Emily is very upset by this news and immediately calls the third-party leave administrator to request her leave.



## Scenario 2: Part 3 of 4 – Workshop Questions Mental Health and the PWFA

1. Does the ADA cover Emily's 12-week leave request?
2. Does the PWFA cover Emily's 12-week leave request?
3. When Emily's manager provided instructions and information to Emily, what did she do well and what could she have done better?



## Scenario 2: Part 4 of 4

### Mental Health and the PWFA

- Emily is delighted to have had a healthy baby boy! Her 12 weeks of leave have ended, and she returned to work parking in the same space next to the building where she had been allowed to park during her pregnancy.
- Her manager heard from co-workers where she parked and quickly responded by asking Emily to return to the parking space she had prior to her pregnancy. Emily did as she was instructed but was upset because her ankles were still swollen from her pregnancy making it difficult for her to walk long distances. However, she does not say anything to her manager.
- Within two weeks of her return, Emily began having postpartum depression. With medical documentation in hand, Emily asked her manager for an accommodation to attend therapy appointments for her postpartum depression. Because she was breast feeding and pumping, she had not been put back on the medications she had used in the past. These therapy appointments were once again on Mondays and Wednesdays from 8 am to 9 am and she would return by 9:30 am.





## Scenario 2: Part 4 of 4 – Workshop Questions Mental Health and the PWFA

1. Did Emily's manager violate the PWFA, when she instructed Emily to return to her former parking place prior to her pregnancy?
2. Does the PWFA protect an employee who is post-delivery and requests an accommodation to attend therapy appointments for postpartum depression?



## Key takeaways

- Mental health index data and Mental health model
- Importance of creating the right organizational climate
- How to address mental health accommodation requests under the ADA and PWFA.
- Importance of engaging in the interactive process
- Better methods for supervisors and managers to use with their employees during ADA and PWFA interactions to effectively communicate critical information in an empathic way.
- Better understanding of when ADA and PWFA accommodations for mental health should be granted.





Thank you.  
It was a pleasure to be with you today!



- If you have questions, feel free to reach out to us at
  - [Ann.Kuzee@telushealth.com](mailto:Ann.Kuzee@telushealth.com)
  - [Paula.Allen@telushealth.com](mailto:Paula.Allen@telushealth.com)

