

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 – 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 – Workshop Questions

Mental Health and the ADA

1. Has Sarah requested an ADA accommodation(s)? If so, what accommodations 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 – 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 4th 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 4th quarter and year-end financials?

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 that was 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 – 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 – 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 – 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?

Scenario 1: Part 1 of 4 – Workshop Questions

Mental Health and the ADA Workshop

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?

Answer: Sarah's health conditions include social phobia and social anxiety disorder. The impacts from her health conditions include having a difficult time concentrating on interactions, is often at a loss of words, starts to sweat and stutter when she is with groups. She isolates herself from others (e.g., she will not go out with others, will eat lunch by herself, and tries to avoid interactions with others). She also experiences rumination.

An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.

We know that Sarah has two mental impairments (i.e., social phobia and social anxiety disorder) and they limit her ability to work. If Sarah made a request for accommodations, like those in the scenario, then her mental health conditions would likely be deemed a disability under the ADA.

Additionally, the ADA provides a non-exhaustive list of examples of major life activities that can be impacted, such as: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. Sarah was impacted by several of these major life activities.

2. What are Sarah's essential functions of her job?

Answer: 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 media but mostly through email.

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)?

Answer: While these job duties might occur infrequently, they are an important part of Sarah's job. These job duties are also identified on her job description as an essential function of her job. These job duties would very likely be considered essential functions of her job.

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?

Answer: Under the ADA, the individual or his/her representative must let their employer know that they need an adjustment or change at work for a reason related to a medical condition. To request an accommodation, an individual may use "plain English" and need not mention the ADA or use the phrase "reasonable 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?

Answer:

Hopelessness and worthlessness are high-risk flags.

- The supervisor should make it clear that he/she cares about her wellbeing, and wants the best for her. They should listen carefully and suggest help from the EAP.
- It would be best to have the supervisor ask if they could call the EAP together and then leave the room for her to speak directly to the EAP service.
- Managers can also call the EAP line themselves for a consultation on how to handle the specific situation.
- Accommodation discussions are a separate issue, which would be appropriate after it is clear that she is not at any risk of harm, and should be driven by the company policies.

3. Do employers need to make accommodations for disabilities that are exacerbated by nonwork-related situations like Sarah's Thanksgiving Day family event?

Answer: Yes, it does not matter if an employee's disability is work related or not, an employer must accommodate unless it would create an undue hardship for the employer.

Scenario 1: Part 3 of 4 – Workshop Questions

Mental Health and the ADA

1. Has Sarah requested an ADA accommodation(s)? If so, what accommodations did she request?

Answer: Yes, Sarah has requested an ADA accommodation. The accommodations Sarah requested were as follows:

- To have a leave of absence from December 4 through December 8, to recover from the increased anxiety she is experiencing.
- To not participate in the December 20 gift exchange and potluck, and to work from home on that day
- To not present the 4th quarter and year-end financial reports on January 30.

Medical documentation to support an accommodation request should be limited to verifying that the employee has an ADA disability and information about the functional limitations that create the need for the accommodation.

2. What do you think Sarah's supervisor should have said about Sarah's medical condition?

Answer: At this point in the scenario, Sarah's supervisor should not make any direct comments about Sarah's specific medical conditions; it is unnecessary. However, Sarah's supervisor could thank Sarah for sharing her health conditions and acknowledge that it must have been difficult for her to share her health issues and that now that they know Sarah's situation, they'll see what can be done to help her.

3. What are some things that Sarah's manager could have said at the conclusion of the meeting to close it out more effectively?

Answer: Sarah's manager could have thanked Sarah for informing her about the situation and communicating her accommodation requests. She could have let Sarah know that she would be evaluating Sarah's accommodations with appropriate management, HR, and/or TPA on a need-to-know basis and her information would be treated as confidential. Sarah's manager could also have let Sarah know when she expects to get back with her, which should be quickly because the date of their meeting is November 29, and Sarah was asking for leave beginning December 4th.

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?

Answer: Engage in the interactive process. The Americans with Disabilities Act (ADA) requires covered employers to provide effective, reasonable accommodations for employees with disabilities. To help determine effective accommodations, the Equal Employment Opportunity Commission (EEOC), recommends that employers use an "interactive process," which simply means that employers and employees with disabilities who request accommodations work together to come up with accommodations. When an accommodation is not obvious, an appropriate accommodation is best determined through a flexible, interactive process.

2. Should Sarah's leave request from December 4 through December 8 been granted as an ADA accommodation?

Answer: Yes. Sarah requested the leave from December 4 through December 8, her request was tied to her disabilities, she presented medical documentation to support her leave request, and the employer did not make any claim that by granting the leave it would cause them an undue hardship.

While the employer did not see a need for this time off because they reasoned that her job provided sufficient quiet and seclusion, *their reasoning doesn't make much sense because she needed bedrest and counseling and not quiet and seclusion at work.*

Sarah's employer should have engaged in the interactive process to learn more about the need for the leave to make sure they understood the request, rather than outright denying her request as this decision could have ramifications.

3. Should Sarah have been allowed to work from home on December 20, the day of the employee holiday party?

Answer: Yes. Sarah has a disability under the ADA that she had disclosed to her employer, she requested an accommodation to work from home due to her disability, and her employer did not claim any undue hardship.

4. Are the 4th quarter and year-end financial report presentations an essential function of Sarah's job?

Answer: Yes. While these presentations may be infrequent, they are a key job responsibility, identified on the job description, they are one of the purposes that this job exists, the function is highly specialized and the employer hires people into this type of position specifically because of their expertise in performing these job functions. %

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5. What should Sarah's employer have discussed with her before mandating that she present the 4th quarter and year-end financials?

Answer: Sarah's employer should have discussed possible reasonable accommodations. Perhaps her presentation could have been recorded instead of doing a live presentation and questions could have been answered virtually or the whole presentation could have been done virtually so she would not have to see the audience.

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?

Answer: While Emily was able to do her job without accommodations prior to her pregnancy, Emily's depression condition (prior to her pregnancy), would likely meet the definition of disability under the ADA if Emily needed and requested an accommodation.

Under the ADA, a person with a disability is someone who has a physical or mental impairment that substantially limits one or more major life activities, has a history or record of such an impairment, or is perceived by others as having such an impairment. Emily meets the disability definition as a person who has a physical or mental impairment that substantially limits one or more major life activities and as a person with a history or record of such an impairment.

2. Is Emily's depression condition that was exacerbated by her pregnancy covered under the PWFA?

Answer: Yes.

Emily's health condition was related to a past health condition (depression), but now because of her pregnancy she can no longer take the medications she was previously using to address her depression and as such, her depression treatment became complicated by her pregnancy.

Under the PWFA, related medical conditions may include conditions that existed before pregnancy or childbirth and for which an individual may already receive an ADA reasonable accommodation. Pregnancy or childbirth may exacerbate the condition, such that additional or different accommodations are needed.

For example, an employee who received extra breaks to eat or drink due to Type 2 diabetes before pregnancy (an ADA reasonable accommodation) may need additional accommodations during pregnancy to monitor and manage the diabetes more closely to avoid or minimize adverse health consequences to the employee or the pregnancy.

As another example, an employee may have had high blood pressure that could be managed with medication prior to pregnancy, but once the employee is pregnant, the high blood pressure may pose a risk to the employee or their pregnancy such that the employee needs bed rest. In these situations, an employee could request a continued or an additional accommodation under the ADA and/or an accommodation 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?

Answer: Yes, Emily's request for an accommodation to attend therapy appointments for her depression that is associated with her pregnancy and has been communicated to her manager would meet the definition of a "known limitation."

A "Known Limitation" means a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or the employee's representative has communicated to the covered entity.

Generally, when an employee might be covered by both the ADA and the PWFA, an employer's analysis should begin with the PWFA because the definition of "known limitation" does not require the higher severity level normally required under the ADA's definition of "disability," and because of this, the employee will more likely be covered under the PWFA.

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?

Answer: No, Emily's employer was not required to engage in the interactive process.

A covered entity's failure to engage in the interactive process, in and of itself, is not a violation of the PWFA, just as it is not a violation of the ADA. However, under the PWFA a covered entity's failure to initiate or participate in the interactive process with the employee after receiving a request for reasonable accommodation could result in liability if the employee does not receive a reasonable accommodation even though one is available that would not have posed an undue hardship.

Covered entities under the PWFA may not require a qualified employee to accept an accommodation other than one arrived at through the interactive process. Thus, employers should not provide employees with an accommodation because the covered entity thinks the accommodation is "obvious." Rather, the covered entity should engage the employee in the interactive process, even if it is very abbreviated.

The Interactive Process does not have to follow specific steps and the Commission changed the title of the possible steps in the interactive process in the Interpretive Guidance to [Recommendations for an Interactive Process](#), while maintaining the substance from the ADA guidance.

2. Under the PWFA, should Emily’s employer provide her with a parking space next to the building?

Answer: Yes.

The PWFA regulation identifies the following reasonable accommodation example: “providing a reserved parking space if the employee is otherwise entitled to use employer provided parking.” The PWFA regulation also offers a reasonable accommodation example related to parking, which states, “Parking – reserved parking space to assist an EE with fatigue, mobility, etc.”

3. Should Emily’s employer require her to provide a doctor’s note (supporting documentation) stating that she should be given a parking space next to the building?

An employer may seek supporting documentation from an employee who requests an accommodation under the PWFA **only when it is reasonable** and the request **does not** conflict with five situations in which documentation is not reasonable and cannot be requested.

Documentation is not reasonable under five circumstances, such as:

- The adjustment or change (accommodation) at work are obvious and the employee provides self-confirmation
- When the employer already has sufficient information
- When the employee is pregnant and seeks one of the modifications described as “predictable assessments”
- When the reasonable accommodation is related to a time and/or place to pump at work, other modifications related to pumping at work, or a time to nurse during work hours and the employee provides self-confirmation
- When the requested accommodation is available to employees without known limitations under the PWFA pursuant to a covered entity’s policies or practices without submitting supporting documentation.

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

1. Does the ADA cover Emily’s 12-week leave request?

Answer: No, **bonding leave** is not protected under the ADA.

In addition, the ADA does not provide protections related to a normal pregnancy. However, while a pregnancy itself is not a disability under the ADA, some pregnant workers may have one or more impairments related to their pregnancy that qualify as a disability under the ADA.

The PWFA rules further notes that employers must treat employees with temporary, pregnancy-related disabilities the same as they treat any other temporarily disabled employees. For example, if an employer permits a worker with a different type of temporary disability (e.g., recovery from surgery) to change their work duties, they must permit a worker with a pregnancy-related temporary disability to do the same.

2. Does the PWFA cover Emily's 12-week leave request?

Answer: Unpaid leave for recovery from childbirth is a listed reasonable accommodation under the PWFA. However, the PWFA rules uses 6 to 8 weeks of leave for childbirth recovery in one of its examples. A longer period of time off for recovery from childbirth could be something an employer could request supporting documentation for, but if the employer allows 12 weeks of unpaid leave for other employee needs without supporting document, then an employer may want to reconsider asking for documentation.

Example #36/Unpaid Leave for Recovery from Childbirth: Sofia, a custodian, is pregnant and will need 6 to 8 weeks of leave to recover from childbirth. Sofia is nervous about asking for leave, so Sofia asks her mother, who knows the owner, to do it for her. The employer has a sick leave policy, but no policy for longer periods of leave. Sofia is not eligible for FMLA leave because her employer is not covered by the FMLA.

1. Known limitation and request for reasonable accommodation: Sofia's need to recover from childbirth is a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions; Sofia needs an adjustment or change at work due to the limitation; Sofia's representative has communicated this information to the employer.

2. Qualified: After the reasonable accommodation of leave, Sofia will be able to perform the essential functions of the job with or without reasonable accommodation.

3. The employer must grant the accommodation of unpaid leave (or another reasonable accommodation) absent undue hardship.

3. When Emily's manager provided instructions and information to Emily, what did she do well and what could she have done better?

Answer: Emily's manager correctly instructed her to report her leave request to the third-party leave administrator, but Emily's manager should have refrained from informing Emily that she didn't think Emily would qualify for FMLA because she had not been employed long enough. Emily's manager also should have refrained from making comments about no applicable state leave law or employer leave program with job protection. These determinations should have been left up to the third-party leave administrator. However, what was more glaringly wrong was that Emily's manager didn't consider the leave protections allowed under the PWFA.

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?

Response: No, because Emily did not make her post-delivery condition (e.g., swollen ankles) known to her manager.

2. Does the PWFA protect an employee who is post-delivery and requests an accommodation to attend therapy appointments for postpartum depression?

Answer: Yes, the PWFA regulation provides that “An employee who requests an accommodation to attend therapy appointments for postpartum depression has a medical condition related to pregnancy or childbirth (postpartum depression) and is obtaining health care related to, affected by, or arising out of a related medical condition.”

Remember, the Pregnant Workers Fairness Act, requires a covered entity to provide reasonable accommodations to a qualified employee’s or applicant’s known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause an undue hardship on the operation of the business of the covered entity.