

Mental Wellness, Thriving Workplace, PWFA, ADA, and FMLA



AUGUST 4-7 • WASHINGTON, DC

Presenters – TELUS Health



Ann Kuzee

Senior Legal Counsel, US ADM



Paula Allen

Global Leader and VP
Research and Insights



The TELUS Mental Health Index

Ongoing measure of mental health and wellbeing

Only includes working individuals

Full validated

Focused on understanding our level of risk and what does or does not make a difference

Sensitive to both mental wellbeing and significant mental distress on a scale of 0-100



Mental health, mental stress and mental illness are related but are very different

Mental Health

- A state of wellbeing in which an individual can realize their full potential:
- Can cope with daily stressors
- Can work productively and contribute to community

Mental Stress

- A mental and physical response that is triggered by a situation:
- The stress more potential for harmful
- Common stress goes away when the situation improves, or a coping strategy proves effective
- The more overwhelming/continuous

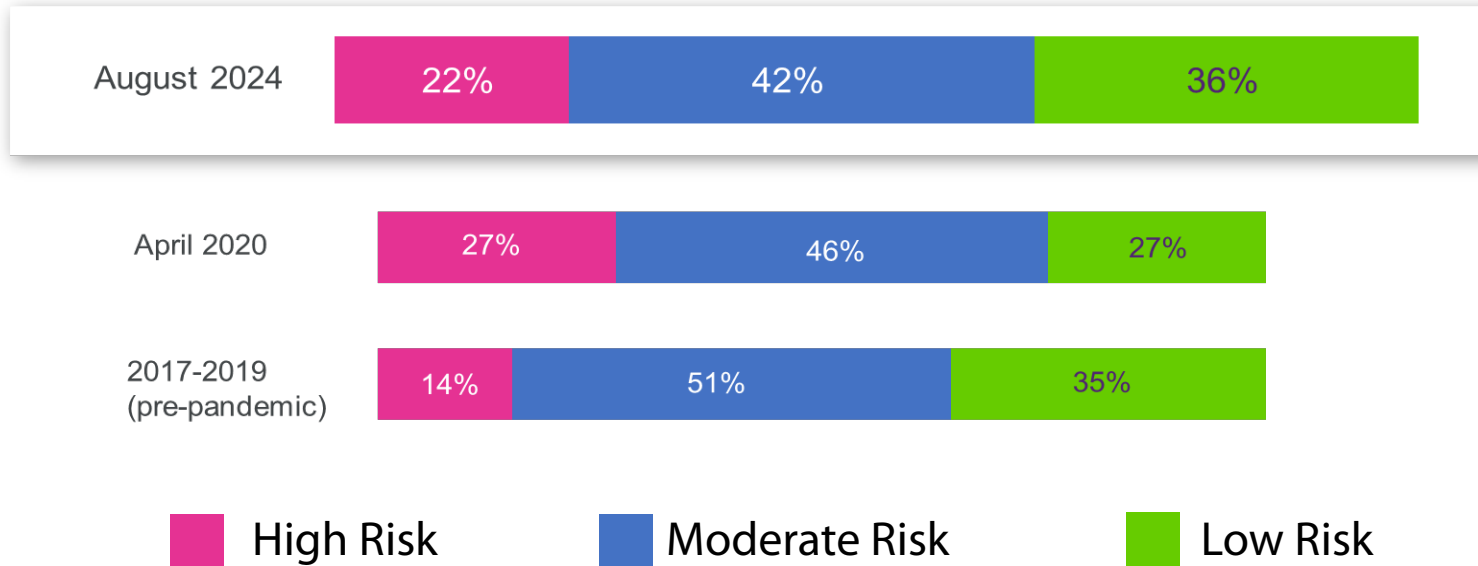
Mental Illness

- A group of health conditions that involve brain circuitry:
- Can be triggered by any combination of experiences, physical, chemical, environmental, or cognitive factors
- Has an impact on emotion, thinking, and behavior



Our collective mental health appears to have been reset

- After the prolonged upheaval – now there are more high-risk workers.



Increased sensitivity to stress means more:

The long-term strain of the pandemic appears to have reset our collective mental health



Prolonged strain over-activates the “fight or flight” response, and dampens empathy and emotional control.

- Conflict
- Cynicism
- Anger
- Impulsiveness or apathy
- Mental health vulnerability



AUGUST 4-7 • WASHINGTON, DC

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.

Five behavioral traits correlate with worker mental health, productivity and discretionary effort.

- Positive Indicators

Shows purpose
vs Uninspiring.

Make decisions
vs Dependent.

Team oriented
vs Individually motivated.

Inclusive
vs Autocratic.

Humane
vs Unempathetic/hostile.

Manager training is key to healthy work.



AUGUST 4-7 • WASHINGTON, DC

Knowing when to step-in is clearer than managers might think.

- Has there been a change in behavior?
- Are you concerned?
- Is the intensity/or lack of intensity of responses unusual?
- Have relationships deteriorated?



When someone is in distress, step-in, listen and show empathy.

- Be human
- Show care
- Be specific about what you see
- Resist quick fixes
- Support the next step



There are some risks with some common responses:

- You deciding how to protect the employee from stress
- Not listening – “the birthday party story”
- Pushing the quick fix
- Becoming the manager/therapist
- Gossiping
- Doing nothing



Managers also have a critical role in disability management.

When an employee in your team is **off work**:

- They will be fearful of returning
- Keep in contact
- Don't push return
- Let them know that you are "looking forward to their return when the time is right"

When an employee in your team **returns to work**:

- They will be fearful of failing
- They will be easily tired
- Treat them like a new employee
- Help them be successful with a plan how to manage challenges



Workshop Scenarios: Mental Wellness, Thriving Workplace, PWFA, ADA, and FMLA



AUGUST 4-7 • WASHINGTON, DC

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.



Workshop Scenario – Part 1

Employment Information

- Belinda works for a manufacturing employer in Ohio with over 1,000 employees at its facility
- Since January 2019 she's worked as an Inventory Control Specialist.
- Her schedule is Mon-Fri. She is one of four employees with this position.
- Her job description identifies her job duties as follows:
 - **Physical Inventory Management (Approximately 50% of the job):**
 - Warehouse inventory checks and stocking (Walking, Pushing, Pulling, Lifting)
 - Lifting requirements: 50% under 30 pounds, 50% is 30 pounds or more.
 - **Office-Based (Approximately 50% of the job):**
 - Supplier, vendor, and department inventory communications via phone and email
 - Updating and analyzing data in inventory management system
 - Entering information into the system



Workshop Scenario – Part 2

- Lifting Accommodation 30 or More Pounds
- Belinda took 12 weeks of FMLA follow a back surgery from a home ladder accident
- Upon return to work on April 30, 2024, she presented a work restriction to her supervisor:
- No lifting 30 or more pounds for 6 weeks
- Her supervisor, claiming ADA expertise, refused to accommodate, stating lifting 30 or more pounds was an essential job function, and employers do not need to remove essential job functions. She would need to do the required lifting for the position.
- Uncertain of what to do, Belinda resorted to asking coworkers for help with heavy lifting.



Workshop Scenario – Part 2 Questions

1. Is Belinda's back condition an ADA-covered disability?
2. Is lifting 30 or more pounds an essential function of Belinda's job?
3. Is the supervisor correct that employers do not need to remove essential job functions under ADA?
4. Does maintaining an essential function exempt an employer from exploring reasonable accommodations?
5. How could the supervisor have created a more supportive and mentally healthy work environment?



Workshop Scenario – Part 3

- Mental Health Impact Following Back Injury
- Belinda has been receiving ongoing psychological treatment for chronic anxiety disorder for several years.
- After her supervisor rejected her lifting restriction of 30 or more pounds, her anxiety increased making it harder for her to do her job:
 - She became self-conscious about her physical limitations, coworkers were watching her more, and both she and her co-workers became increasingly stressed about providing unauthorized assistance with heavy lifting.
- Her psychologist finally referred her to a psychiatrist who prescribed antidepressants for anxiety and depression and provided documentation to cover 4-weeks of intermittent absences as needed for med adjustment.
- Having exhausted her FMLA and uncertain what to do following the rejection of her lifting restriction, Belinda withheld her paperwork and decided to produce it only if she absolutely needed to.



Workshop Scenario – Part 3 Questions

1. How did the supervisor's past actions related to not accommodating her lifting restrictions influence Belinda's reluctance to submit medical documentation?
2. After exhausting FMLA, what leave option would have been available to Belinda had she requested intermittent leave for medication adjustment?
3. How has the supervisor's handling of Belinda's lifting accommodation request affected her work environment and mental health?



Workshop Scenario – Part 4

Prenatal Appointments and CBT Appointments

- Approximately two month's later Belinda learned that she was two months pregnant
- Belinda's doctor informed her that she would need:
 - Monthly prenatal visits (1-2 times)
 - Weekly one-hour CBT (Cognitive Behavioral Therapy) sessions in place of medication
- Belinda requested leave for prenatal visits and CBT appointments
- Supervisor's response:
 - Looked annoyed, informed her that she had exhausted her FMLA and would need to take PTO or schedule appointments before or after work.
- Belinda was at a loss with the thought of no approved prenatal or CBT appointments.
- She was hoping to preserve her PTO for maternity leave.



Workshop Scenario – Part 4 Questions

1. Which federal law provides the most straightforward coverage for Belinda's prenatal and CBT appointments?
2. How does a supervisor's negative response to requests for prenatal and mental health appointments impact an employee's well-being.



Workshop Scenario – Part 5

Belinda's Pregnancy Accommodation Journey

- Urged by family and friends, Belinda approaches HR about her prenatal and CBT appointments
- HR met with Belinda right away. HR calms Belinda and listens. With no immediate appointments pending, explains PWFA, reassures her, and directs her on how to contact the TPA Leave Administrator to request leave.
- HR quickly follows up with the supervisor about PWFA coverage for these appointments.
- Belinda contacts the TPA and submits requested information
- TPA promptly approves Belinda's PWFA request for prenatal and CBT appointments, following confirmation of no undue hardship
- Afterwards, Belinda senses more tension with her supervisor



Workshop Scenario – Part 5 Questions

1. What steps did HR take that demonstrated best practices in handling Belinda's appointment accommodation requests?
2. How can an organization improve relationships between employees and supervisors after accommodations are approved?



Workshop Scenario – Part 6

Pregnancy-Related Extension of Accommodations

- Belinda's doctor extends her post-surgery lifting restrictions throughout her pregnancy due to pregnancy-related exacerbation of her back condition.
- Belinda explains this to her supervisor and requests lifting restrictions of not more than 30 pounds.
- Supervisor's reaction:
 - Shows visible irritation and requests medical documentation
 - Allows staff to temporarily assist her with lifting 30 pounds or more
 - Will reassess her situation after receiving medical documentation
- Belinda provides medical documentation the next day; supervisor continues to have staff assist her with lifting



Workshop Scenario – Part 6 Questions

1. Under which law, the ADA or PWFA, is Belinda's new lifting restriction of no more than 30 pounds protected?
2. Did the supervisor's response comply with PWFA requirements?
3. Was Belinda's supervisor correct in requesting additional medical documentation?



Workshop Scenario – Part 7

Pregnancy-Related Accommodation of Pre-Existing Condition

- At seven months pregnant, Belinda needs hourly restroom breaks during warehouse inventory checks and informs her supervisor of this
- Supervisor initially approves the breaks but is unsure if that was correct, and directs Belinda to speak to HR, which she does.
- Later supervisor discusses Belinda's accommodations with three other supervisors
- HR learns from TPA that request qualifies as a Predictable Assessment. Additional breaks approved under PWFA.
- HR informs supervisor and explains why



Workshop Scenario – Part 7 Questions

1. What are the four Predictable Assessments under the PWFA?
2. Could Belinda's supervisor legally discuss her accommodations with others?



Workshop Scenario – Part 8

Pregnancy Leave

- At 8 months pregnant, Belinda requests:
 - 6 weeks childbirth recovery leave
 - 12 weeks bonding leave
- While surprised by the length of the leave request, her supervisor keeps a neutral demeanor and directs her to notify the TPA to request her leave.
- Belinda does as she's instructed.
- Because Belinda has not regained FMLA yet, to cover the 6 weeks of childbirth recovery, TPA approves PWFA.
- TPA also determines that Belinda will begin regaining her FMLA EXACTLY 6 weeks after her delivery date.
- Because Belinda will be regaining all her FMLA exactly at the same time she will be using it, which happens to be at the start of a new claim year, she's approved for 12 weeks of FMLA for bonding leave.



Workshop Scenario – Part 8 Questions

1. Does PWFA allow childbirth recovery leave?
2. Is Belinda eligible for 12 weeks FMLA bonding leave?



Workshop Scenario – Part 9

Return to Work

- Belinda has a healthy baby girl
- 18 weeks later, Belinda returns to work with two requests:
 1. One-month lifting restriction of 30 pounds or more due to exacerbation of her pre-existing back condition resulting from childbirth
 2. Private space and additional breaks for breast milk pumping for three months
- Supervisor's response:
 - In a friendly voice and expression, agrees to discuss the lifting accommodation
 - Informs Belinda of designated pumping space
 - Commits to arranging necessary breaks



Workshop Scenario – Part 9 Questions

1. Does PWFA or ADA cover Belinda's one-month lifting restriction due to childbirth aggravating her existing back condition?
2. What are Belinda's rights for breast milk pumping under the PWFA?
3. How did Belinda's supervisor handle her post-return accommodation requests?



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
- Paula.Allen@telushealth.com



AUGUST 4-7 • WASHINGTON, DC