



## **Stress: Its Fallout in the Workplace under ADA, FMLA, and Workers' Compensation** *Written by Beverly Purtell, Principal Consultant, HRValue Group, LLC*

Stress in the workplace is probably just as prevalent as stress anywhere outside the workplace in this busy world! But stress in the workplace needs special attention by the management team because of its ramifications for ADA, FMLA, and Workers' Compensation

Stress...a word we all can relate to in varying degrees depending on the time of year! Webster defines stress as, "A force that tends to strain or deform...mental, emotional, or physical tension, strain, or distress." We've all experienced that "bad day" with tense muscles, a headache, knots in the stomach, etc. But the stress that causes concern is the chronic stress that begins to cause physical and emotional damage like high blood pressure, heart disease, depression, etc.

How prevalent is stress? A Gallup Poll, sponsored by the Marlin Company, found that "80% of workers feel stress on the job; nearly half say they need help in learning how to manage stress; and 42% say their coworkers need such help..." How costly is it? According to data from the Bureau of Labor Statistics, "workers who must take time off work because of stress, anxiety, or a related disorder will be off the job for about 20 days."

If you, the employer, believe that a happy employee is a productive employee, and you want to improve attendance and limit risk, then providing a work environment that recognizes stressors is in your best interest. An effective, proactive employer needs to recognize when the work environment is causing unhealthy stress that can have negative, unpleasant, even litigious ramifications. A good employer needs to understand when to ask the appropriate questions that could involve FMLA, ADA, or Workers Compensation.

### **FMLA**

While "stress" itself may not fall under the FMLA, when there is enough stress to cause a subsequent mental or physical health condition that meets FMLA requirements, that resulting condition could qualify. To be a bona fide illness under FMLA, the following (albeit abbreviated) conditions must be met:

The employee must receive inpatient care in an approved facility; or

The employee is incapacitated for at least 3 consecutive days and then requires treatment by a health care provider; or

The employee has a chronic and/or serious health condition that incapacitates – renders the employee incapable of doing anything, from time to time; or

The employee receives multiple treatments by a healthcare provider which if left untreated could render the employee incapacitated for 3 or more days.

## **ADA**

Again, while stress itself may not qualify under Americans with Disabilities Act, the Act states that the employee has a physical or mental disability that limits one or more life functions. Major life functions under ADA include walking, talking, hearing, seeing, learning, breathing, concentrating, caring for oneself, performing manual tasks, etc. While stress itself may not be a qualifying condition, stress that impacts concentration as a disabling condition may qualify.

In addition to having a disability, there are two other factors that could qualify an employee as disabled under ADA—the employee has a record of such an impairment, or the employee is regarded as having such an impairment. In the case of the latter, the employer need only think of the employee as disabled for there to be a disability consideration.

Additionally, the employee must show that he/she is able to perform all the essential functions of the job, either with or without reasonable accommodation. Handling the everyday, normal stress of a job may be an essential function of a job. And while the courts are leaning in this direction, the jury is still out on this issue depending on the individual circumstances.

## **Workers' Compensation**

Stress on the job may have its greatest financial impact for employers in workers' compensation claims. Mental or emotional disabilities that result from work transfers, demotions, terminations, etc., are covered in some states if the job action can be shown to be an intentional infliction of emotional harm. It does not take much imagination to conjure up events that could be construed as intentional infliction of emotional harm that result in stress-related disabilities! Stress that causes distraction (or lack of concentration as noted in ADA) causes accidents; and accidents at work are covered by Workers' Compensation.

The employer who understands the complexities of stress and its impact on any of the following—ADA, FMLA, Workers' Compensation, worker productivity, absenteeism, coverage for absences, violence in the workplace, etc.—begins to understand the importance of testing the levels of stress in his/her credit union to mitigate risk at a minimum and to create a positive and productive environment as a goal.

In gathering material for this article, we came across a report released by Money Magazine in December of 2003 with the headline, "Overworked employees are fed up: a survey finds that 8 out of 10 Americans want a new job." It goes on to say, "Cash-strapped employers have been cutting back on benefits like health care, paid vacations and retirement benefits.... The threat of pink slips has prompted plenty of people to work scared and to give everything to their jobs."

As HR professionals, we at HRValue Group consistently see evidence of unhappy, overworked, overwhelmed employees. However, we were stunned by a report that projects a potential 80% turnover when the job market picks up. This alone should be impetus for credit union CEOs and managers to take a pulse on what their employees are feeling about their work environment, including the level of stress that is present.



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