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### **Employee Mental Health Issues**

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## Mental Health Facts & Employment

### **Mental Health Facts**

- 1 in 5 U.S. adults experience mental illness each year.
- 1 in 20 U.S. adults experience serious mental illness each year.
- 1 in 6 U.S. youth aged 6-17 experience a mental health disorder each year.
- 50% of all lifetime mental illness begins by age 14, and 75% by age 24.
- Suicide is the second leading cause of death among people aged 10-34.

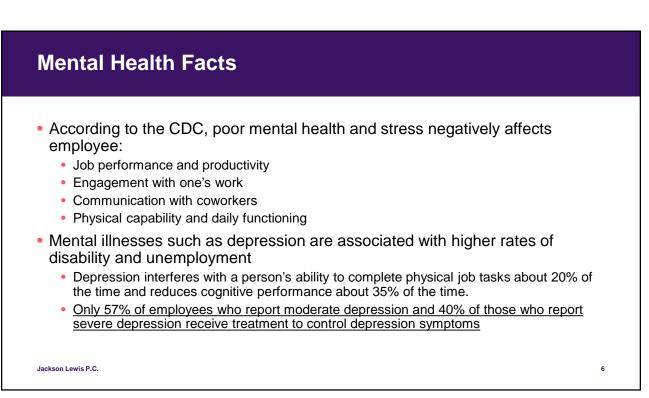
Source: www.nami.org

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### **Mental Health Facts**

- 11 years is the average delay between symptom onset and treatment
- 19% of U.S. adults with mental illness also have a substance use disorder
- Depression and anxiety have a significant economic impact; the estimated cost to the global economy is US\$1 trillion per year in lost productivity
- Harassment and bullying at work are commonly reported problems, and can have a substantial adverse impact on mental health
- According to the World Health Organization, for every US\$1 put into scaled-up treatment for common mental disorders, there is a return of US\$4 in improved health and productivity

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• In a 2	021 Mental Health at Work Report	
	% of full-time U.S. workers have left a previous role due, at least in part, to mental alth reasons	
•	This number rises to:	
	<ul> <li>81% of Gen Z respondents</li> </ul>	
	<ul> <li>68% of Millennial respondents</li> </ul>	
	<ul> <li>32% when considering voluntary departures</li> </ul>	
	average, workers reported performing at 72% of their full capacity in the past year en considering their mental health	
• Ab	senteeism is on the rise	
•	On average, respondents missed 8 days due to mental health	
	unger workers and historically underrepresented communities are disproportionately pacted	
	2.6	7

- Feeling very sad or withdrawn for more than two weeks
- Trying to harm or end one's life or making plans to do so
- Severe, out-of-control, risk-taking behavior that causes harm to self or others
- Sudden overwhelming fear for no reason, sometimes with a racing heart, physical discomfort or difficulty breathing
- Significant weight loss or gain

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### **Common Warning Signs of Mental Illness**

- Seeing, hearing or believing things that aren't real
- Excessive use of alcohol or drugs
- Drastic changes in mood, behavior, personality or sleeping habits
- · Extreme difficulty concentrating or staying still
- · Intense worries or fears that get in the way of daily activities
- Inability to cope with daily problems or stress

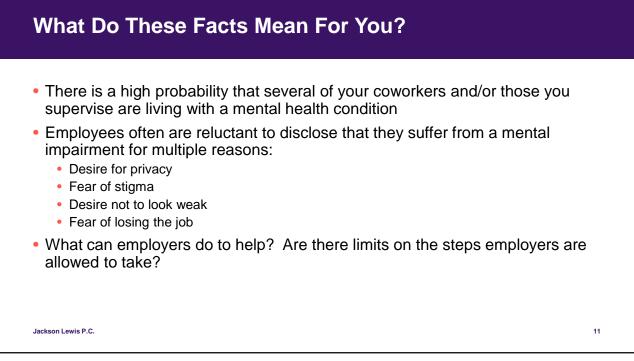
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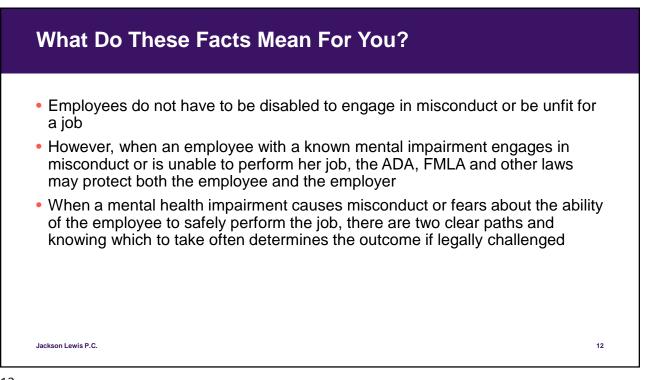
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### **Challenges of Hidden Disabilities**

- · Employers and co-workers don't understand and are suspicious
- · Employees reluctant to disclose due to stigma
- Accommodation process can be overwhelming
- Can lead to performance issues
- Difficult to manage absenteeism

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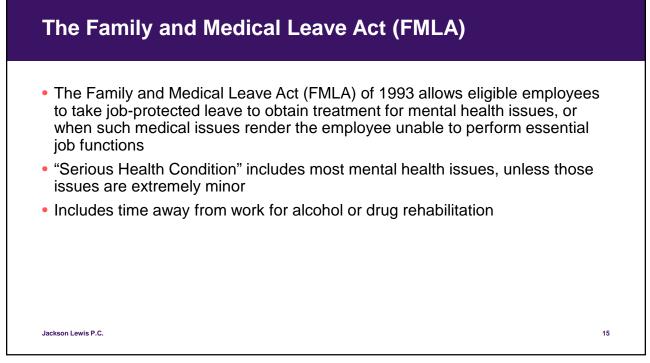
## **FMLA and Mental Health**

### What are the rules?

- Employers do not have a "duty of care" that requires them to take certain steps if an employee is at risk
- In fact, employers may be restricted in their ability to investigate and help an employee who is struggling
- BUT no employer wants to watch its employees struggle with mental health and not attempt to help
- So . . . What are the rules that limit an employer's options when helping an employee with mental illness?

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The Family and Medical Leave Act (FMLA)	
<ul> <li>It is the employee's responsibility to request FMLA leave or to put the employer on notice of a need for leave</li> <li>No "magic words" are needed</li> <li>An oral request to a supervisor is sufficient. A written request, or a request made to a particular person, is not required</li> <li>The employee's family member, friend or other spokesperson can make the request for the employee</li> </ul>	•
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### The Family and Medical Leave Act (FMLA)

- Employees should not be asked to perform work during leave, except extremely infrequently (i.e., to help locate a file; to participate in an occasional call *if* the employee's health care provider permits it)
- Employees should never be criticized for taking leave
- They should not be expected to perform the same amount of work notwithstanding their leave

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# Intermittent Leave: Basics A doctors' note cannot be required for each absence Exempt employees can be docked in partial day increments, if they have no paid leave available Group health benefits must be maintained Employees can be required to re-qualify each year, on the anniversary of the start of intermittent leave

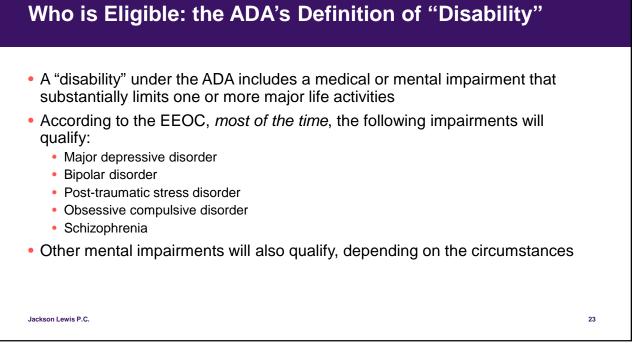
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## **ADA and Mental Health**

### The American With Disabilities Act (ADA)

- The ADA provides:
  - Non-discrimination
  - Reasonable accommodation
  - · Restrictions on medical exams and inquires
  - Medical confidentiality
  - No retaliation for asserting ADA rights

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Definition of "Disability"	
<ul> <li>Under the ADA Amendments Act (ADAAA), the term "disability" construed in favor of broad coverage of individuals to the more permitted by the terms of [the ADA.]</li> <li>As a result, it is no longer useful to analyze whether an employed under the ADA, except in very marginal cases</li> </ul>	aximum extent
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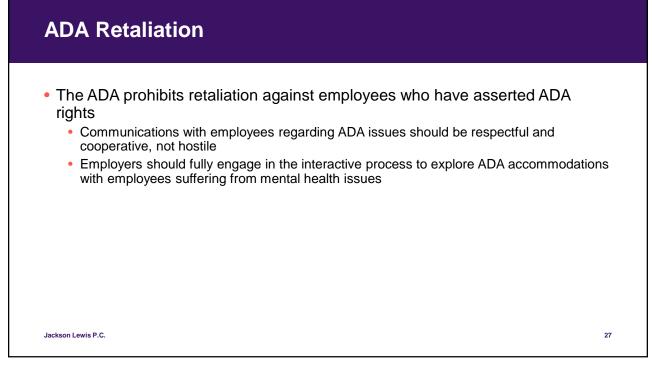
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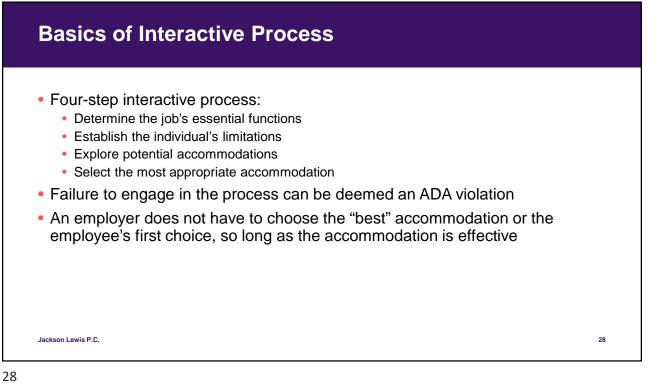
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### **Undue Hardship**

- An employer does not have to provide a reasonable accommodation that would cause an "undue hardship"
- An almost impossible standard to meet
- · Generalized conclusions will not suffice
- · Requires "significant difficulty or expense"

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### The Ada's Confidentiality Requirement

- The ADA requires that employers maintain employee medical information in a confidential manner
- Must be stored on separate forms and in separate medical files

### • Exceptions:

- Supervisors as needed
- First aid and safety personnel
- Government officials (such as the EEOC)

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### Determine Whether the Mental Health Impairment is Creating a Workplace Misconduct or Fitness for Duty Issue

- Path 1: Does the situation involve workplace misconduct that would make the employee unqualified for the job and result in discipline?
  - If misconduct occurred, it would result in discipline
  - Investigate
  - · Check comparators/discipline consistently
  - Ignore medical issues

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### Determine Whether the Mental Health Impairment is Creating a Workplace Misconduct or Fitness for Duty Issue

- Path 2: Does the situation involve only whether the employee can effectively perform the job without risk to self or others?
  - Address situation as a "fitness for duty" issue
  - "Medicalizes" the situation
  - Evaluation by employee's healthcare provider and possible second opinion by employer's doctor
  - If you choose the fitness for duty path, you can't practically go back to termination if the employee passe the evaluation

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# Performance Problems and Misconduct Address in the same way you address with every employee Having a disability does not excuse a person from workplace rules and policies Except to the extent exceptions are granted as reasonable accommodations Conduct regular performance evaluations Make sure there's a good job fit Make sure everyone is on the same page Discipline and eventually remove employee from position

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# Why Current and Accurate Job Descriptions are Important

- Understanding corporate structure and everyone's role
- Day-to-day HR functions
- Defending employment litigation
- Identifies essential job functions
- Strengthens arguments about which accommodations are unreasonable
- Identifies duties for healthcare providers to evaluate when releasing employees to return for work/identifying restrictions
- Determines whether position is appropriate for employee's need for light duty

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### Guidance and Resources

- EEOC Guidance: Depression, PTSD, & other Mental Health Conditions in the Workplace: Your Legal Rights (directed at employees)
- EEOC Guidance: The Americans With Disabilities Act: Applying Performance and Conduct Standards to Employees With Disabilities
- EEOC Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act
- EEOC Guidance on the Americans with Disabilities Act and Psychiatric Disabilities

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### Make Resources Known

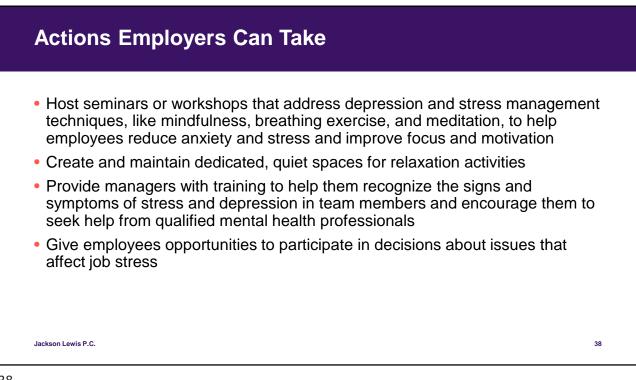
- Employee Assistance Programs
- Confiding in Management and HR
- Local Counseling Services
- National Hotlines
- CDC website
- National Institute of Mental Health
- National Alliance on Mental Illness

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### **Actions Employers Can Take**

- According to the Kaiser Family Foundation's 2021 Employer Health Benefits Survey, during the pandemic, employers with at least 50 employees made benefit changes, including:
  - 31% increased ways to access mental health services such as telemedicine
  - 16% increased EAP offerings
  - · 6% expanded access to in-network mental health providers
  - 4% reduced cost sharing for such visits
  - 3% increased coverage for out-of-network services

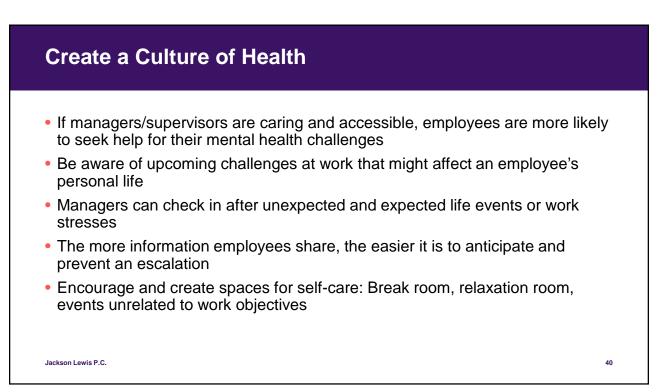
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### **Create a Culture of Health**

- The workplace is an optimal setting to create a culture of health because:
  - · Communication structures are already in place
  - · Programs and policies come from one central team
  - Social support networks are available
  - Employers can offer incentives to reinforce healthy behaviors
  - · Employers can use data to track progress and measure the effects
  - Distribute materials, such as brochures, fliers, and videos, to all employees about the signs and symptoms of poor mental health and opportunities for treatment
- Office culture contributes to the likelihood that an employee will share potential signs of distress in others
- Create a culture where employees can seek help

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# Thank you.