

## **Mental Health and the ADA: Facts, Myths and Some Secrets to Success**

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The Americans with Disabilities Act prohibits discrimination against persons with a disability, which is defined as: a physical or mental impairment that substantially limits one or more major life activities. Section 3 of the ADAAA, 42 USC Section 12102 (1)(A). The ADAAA<sup>1</sup> makes it clear that major life activities include mental health.

In the definitions to the Act, major life activity includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, sanding, concentrating, thinking, communicating and working. It also includes the “operation of a major bodily function”:

### (B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, **brain**, respiratory, circulatory, endocrine, and reproductive functions.

According to the

## **EEOC Statistics**

During FY 2022, EEOC received a total of 73,485 Charges. Of that total, 25,004 charges involved claims under the Americans with Disabilities Act. These charges break down under issues as follows:

FY 2022 showed an increase in ADA charges over previous years: By comparison in FY 2021, the EEOC received 22,843 disability charges. In 2020, EEOC received 22,324 disability charges. In 2019, 24,238 ADA charges.

## **ADA Requires Reasonable Accommodation**

The ADA requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship.

A reasonable accommodation is any modification or adjustment in the work environment or in the way things are customarily done that enables qualified individuals with disability to apply for

To be entitled to a reasonable accommodation, the individual must have an actual disability or  
[REDACTED]  
accommodations.

### EEOC Litigation Cases

~~RESOLUTIONS OF SOCIAL SECURITY DISABILITY CLAIMS IN THE UNITED STATES~~

the Consent Decree, the companies will also provide training on ADA compliance, with an emphasis on reasonable accommodations, and will provide periodic reports to the EEOC.

~~CONFIDENTIAL~~

CHICAGO – Pivotal Home Solutions, a home warranty company headquartered in Naperville, Illinois, will pay \$175,000 and furnish other relief to settle a disability discrimination lawsuit brought by the EEOC.

The Charging Party worked at Pivotal Home Solutions as a dispatcher through a staffing agency for nearly six months. During that time, she succeeded in her role, received no negative performance evaluations, and was told that she would likely be hired to work directly for Pivotal instead of through the staffing agency. Prior to her employment with Pivotal, Charging Party had been diagnosed with post-traumatic stress disorder (“PTSD”) and anxiety. For the Charging Party, PTSD and anxiety substantially limited a number of major life activities including emotional regulation, the function of her brain, eating, sleeping, breathing, and thinking.

In January 2018, the Charging Party disclosed to her supervisor that she had a panic attack and had been prescribed medication to treat her post-traumatic stress disorder and anxiety. Shortly thereafter, the supervisor contacted several representatives of the staffing company that placed the employee at Pivotal and requested that she be separated because of her “nervous breakdown.” In two of the phone calls, documented by representatives of the staffing company, the supervisor indicated that the employee had no performance issues but that he wanted to separate her anyway because he believed that the environment was too stressful for her. At least one representative of the staffing company informed the supervisor of the risk of terminating an employee for a medical condition that did not affect her performance, but the supervisor continued to request that the employee be terminated.

Consent Decree: Under the 3-year Consent Decree, Pivotal agreed to pay \$175,000 to the former employee for backpay and compensatory damages. Further, Pivotal is subject to an injunction forbidding it from discriminating against employees, including employees working for Pivotal through a staffing company, because of their disability. Pivotal is also subject to an injunction forbidding it from retaliating against employees for opposing any practice made unlawful under the ADA, filing a charge of discrimination under the ADA, testifying in any proceeding under the ADA, or for asserting any rights under the consent decree. Pivotal is also required to update its policies to prohibit discrimination under 70.88 13.8 ref 70.88 13.8o uc6.18 13.8t frh4 m(e)4 (m)-2 (pl)-2 (oye)

Charging Party was a help desk technician who was diagnosed with schizoaffective disorder. She worked for Sinclair Broadcast Group at an office located in Cockeysville, Maryland. Before

## COMPLAINTS

~~CHARGE, EN 2400845 (EEOC)~~  
9/2023

FRESNO, Calif. – Elaine’s Pet Resort, LP and Elaine’s Animal House Inc., which operates pet resorts in Fresno and Madera, California, violated federal law by failing to provide reasonable accommodation to a class of applicants and employees, EEOC charged in a lawsuit filed Sep. 29, 2023.

Beginning in 2021, Elaine’s Pet failed to engage in the interactive process and provide a reasonable accommodation to a class of applicants and employees with disabilities whose post-offer drug tests came back positive. Defendant refused to hire any applicant who had positive results on their post-offer drug screening tests. The EEOC alleges that Elaine’s Pet failed to engage in the interactive process that would have determined that the medication was legally prescribed and instead took negative employment actions against their applicants or employees.

In the Complaint, EEOC details what happened to Charging Party I and II. Charging Party I applied for Kennel Staff positions. He has Attention-Deficit/Hyperactivity Disorder (“ADHD”). He had a positive result on the drug screening test resulting from Adderall, a medication prescribed to him for ADHD. Defendants rescinded his job offer and failed to hire Charging Party I, rather than accommodating him by making an exception to their blanket policy. When Charging Party I called the General Manager to explain that he has ADHD, the General Manager stated to Charging Party I that she could not hire people with disabilities or have them around the dogs.

Charging Party II has depression, chronic anxiety disorder, chronic pain and past opioid addiction. She had a positive result on a post-offer drug screening test that was attributable to medications

disorder. Charging Party has an emotional support animal and was able to perform all of her duties remotely.

In January 2022, Charging Party had a flare-up in her symptoms. Charging Party requested to