

# Managing Mental Health: Employer Responsibilities & Best Practices

Presented by:

Elizabeth Johnston  
Ejohnston@verrill-law.com

Erik Peters  
Epeters@verrill-law.com

## Conversations About Mental Health

### **21% of U.S. adults are experiencing a mental illness**

- 2023 State of Mental Health In America, Mental Health America

### **Adults aged 35-44:**

- 31% reported mental illness in 2019
- 45% reported mental illness in 2023
- Stress in America 2023 study conducted by The Harris Poll on behalf of the American Psychological Association

## Senator John Fetterman

Discharged March 31, 2023 from Walter Reed National Military Medical Center in Washington, D.C., where he had been receiving treatment for clinical depression



Source: The New York Times/Pete Marovich

## Simone Biles

Withdrew from multiple events at the 2020 Olympics, citing mental health issues



Source: Shutterstock/Salty View



## Dwayne Johnson

"I found that, with depression, one of the most important things you could realize is that you're not alone," he said in a [YouTube video](#) "You're not the first to go through it; you're not going to be the last to go through it. And oftentimes—it happens—you just feel like you're alone. You feel like it's only you. You're in your bubble. And I wish I had someone at that time who could just pull me aside and [say], 'Hey, it's gonna be OK. It'll be OK.' So, I wish I knew that."

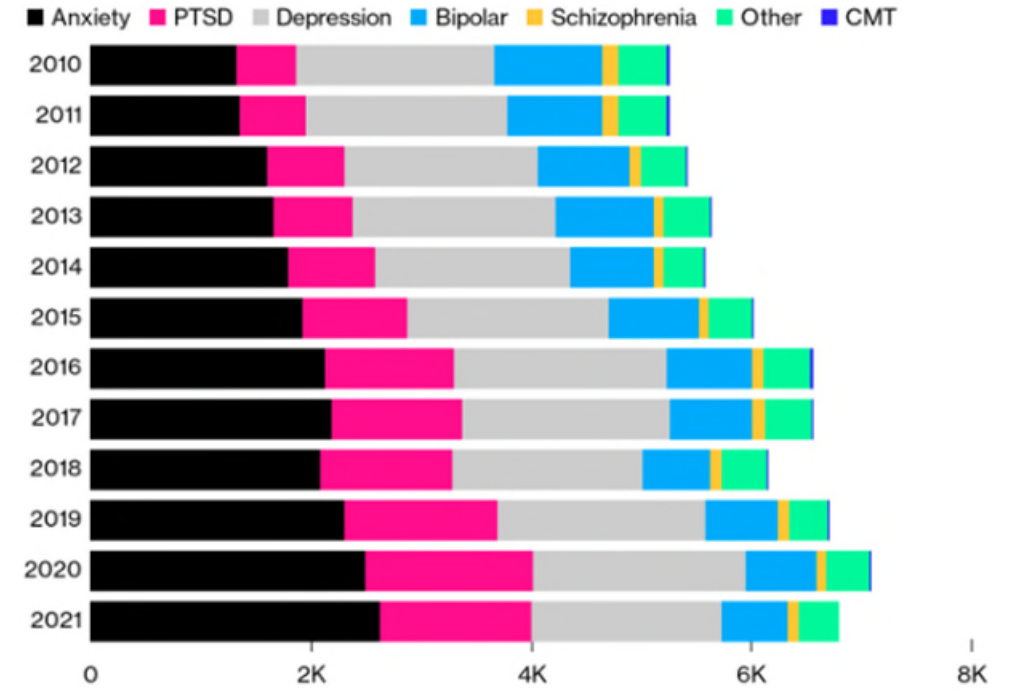
Source: Harpers  
Bazaar/Kayleigh Roberts

# Increase In Workplace Discrimination Claims

**30% of ADA-related charges in 2021 were related to mental health discrimination – up from 20% in 2010**

- Anxiety and PTSD most prevalent
- Bloomberg Article: Anxiety, PTSD Drive Rise in Mental Health Employment Bias Claims

**Mental Health Discrimination Charges**  
EEOC charges alleging bias against workers with anxiety, PTSD on the rise



Source: U.S. Equal Employment Opportunity Commission  
Bloomberg Law

## Mental Health Discrimination – Enforcement Priority For EEOC

### EEOC Strategic Enforcement Plan Fiscal Years 2024 – 2028

- **Expands the vulnerable and underserved worker priority to include** additional categories of workers who may be unaware of their rights under equal employment opportunity laws, may be reluctant or unable to exercise their legally protected rights, or have historically been underserved by federal employment discrimination protections—such as **workers facing mental health related disabilities.**
- The EEOC will focus on harassment, retaliation, job segregation, labor trafficking, discriminatory pay, disparate working conditions, and other policies and practices that impact particularly vulnerable workers and persons from underserved communities. **With respect to employment discrimination, the Commission views the category of vulnerable workers as including: workers with mental health related disabilities.**

## Mental Health & Employer Responsibilities – The Basics

- ADA & MHRA apply to “disabilities” – physical or mental impairments that substantially limit one or more major life activities, a record of such impairments, or being regarded as having such impairments.
- When an employee or applicant requests an accommodation, parties must engage in the interactive process to determine whether there exists a reasonable accommodation for the disability.



## Mental Health & Employer Responsibilities – the Basics (continued)

- ***Interactive process*** – a mutual dialogue between the employer and the employee, with the objective of arriving at an agreed upon, reasonable accommodation
- ***Reasonable accommodation*** - change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities

## Employer Responsibilities - Challenges

- Not like a broken leg or a bad back – the existence of the disability and the need for accommodation may not be clear
- Determining appropriate accommodation may be difficult:
  - May involve open-ended or intermittent leave
  - Situation may require coordination/compliance with multiple laws – FMLA, workers' compensation statutes
  - Employee's recovery or condition may not be linear – may be challenges, employee's condition may change

## Addressing Challenges

- Ensure policies make clear that prohibitions on discrimination include mental as well as physical disabilities
- Make sure employees are aware of this beyond having a policy in the handbook
- Provide training for managers/supervisors on handling reports or requests for accommodation concerning mental disabilities
- Make resources available to employees to assist with mental health issues/concerns
- Educate employees on available resources and the accommodation process

# QUESTIONS?