Federal Employment Law Training Group

Teaching the Law of the Federal Workplace

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A few days ago, Samantha Bee said something that caused a big uproar in a lot of places. Well, I've closely reviewed what she said, and I've decided that she used a word that I find I should be using more often. Sadly, it's a word that applies to too many practitioners in the business of federal employment law. Read no further if you're easily offended, but the Samantha-Bee adjective of the week that we plan to start using more often here at FELTG is … feckless. Look it up on The Google and you will see feckless defined as "irresponsible, useless, worthless, incompetent, inept" and a few other choice synonyms. Recently, I had an agency attorney argue with me in a class that it is illegal for the proposing official in a disciplinary action to indicate a level of discipline: feckless. In another class years ago, I had a "senior HR specialist" tell me that before a supervisor could issue a Reprimand, he had to issue 23 Warnings: feckless. A senior management official once told me that it would be impossible to determine if an employee was performing unacceptably in fewer than six months: feckless. Yes, "feckless" has now become my second-favorite "F" word (you'll find my Number One favorite f-word at the end of this newsletter). So, come to our FELTG seminars. Learn how to hold employees accountable expediently and fairly. Don't make me use the f-word when describing something we hear you have said or done. We may be a tiny little training company, but we know how to hurl insults with the Big Dogs. And, the Big Bees.

Bill

COMING UP IN WASHINGTON, DC

Federal Workplace Challenges: Behavioral Health Issues, Threats of Violence, and Coworker Conflicts
July 17-19

Absence, Leave Abuse & Medical Issues Week
September 24-28

JOIN FELTG IN ANCHORAGE

Managing Federal Employee Accountability
July 23-27

WEBINARS ON THE DOCKET

Watch Your Words: Drafting Defensible Charges in Misconduct Cases
June 14

Selecting a Defensible Penalty for Misconduct: An In-Depth Look at the Douglas Factors
June 28

Understanding MD-715: An Effective Approach to Barrier Analysis
July 12

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Handling Social Media Threats from an Off-Duty Employee
By Deborah Hopkins

Here's an email we received after a recent training program on managing employee behavioral health issues in the federal workplace:

> Dear FELTG, thank you for an excellent presentation today on behavioral health issues. I had a question about how we work with an employee who is delusional, in danger of being harmed and not in the workplace at present. How do we handle calls/texts on our personal cell phones and social media (such as Facebook) from such an employee? What is our responsibility as an organization with this situation?

And here's the response to the hypothetical scenario above:

Dear FELTG Attendee,

Thanks for the email. Regarding the "legal" side of this hypothetical case: if the person is a current employee and the texting/messaging/calling is causing a disruption in the workplace (there's your nexus), you can give a direct order to the employee to stop contacting co-workers on their personal phones and social media accounts. Then, if the behavior continues, you can issue discipline for the violation. As far as an appropriate penalty, that's directly related to the level of disruption the texting/calling causes. (Unless you're in the VA, in which case you can fire the employee and not worry about a judge mitigating the penalty to something less than removal. I'm not necessarily suggesting you do that – but it is the new law for the VA.)

If you want to be extra careful, when you give the employee the written directive to stop contacting people after hours, you'll include the gag order language below – if you don't want to give the Office of Special Counsel any reasons to get excited.

> "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."

Discipline early, before it gets any further out of hand. So, there's the legal side. On the clinical side, here are some thoughts on dealing with someone who may have some behavioral health issues:

1. Be careful about what you say to the employee so you don't set him off, and if feasible, direct the employee towards professional help or EAP. Also, save the conversations/texts that are being sent, should you need them as evidence later on.

2. If things escalate and the person does not listen to your orders to stop texting/calling/messaging, you can contact your local behavioral health crisis hotline and provide them with all the information they have so a mental health professional can intervene.

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3. Also, if the employee is making violent threats towards others you can call the local police and/or mental health crisis line. If you feel the employee is in immediate danger or is reporting thoughts to kill himself, then call 911 and the crisis line as they will work collaboratively.

Mental and behavioral health issues are no joke, so whatever you do, don't ignore them.

If you want more, come to our upcoming class **Handling Federal Workplace Challenges: Dealing with Behavioral Health Issues, Threats of Violence, and Coworker Conflicts** July 17-19 in Washington, DC. Hopkins@FELTG.com

Religious Objections to LGBT Rights: What Prevails in the Federal Sector?

By Meghan Droste

We As you may know, June is Pride Month—a time to reflect on the history of the LGBTQ rights movement and to celebrate the advances we have made. The timing is connected to the 1969 Stonewall riots in New York, which were a significant tipping point for the movement. In addition to the upcoming parades and parties, LGBTQ rights are also in the news right now because of the Supreme Court's recent decision in the closely watched *Masterpiece Cakeshop v. Colorado Civil Rights Commission* case. Although the federal government generally is not in the business of baking cakes—please send me edible proof if I am wrong—the underlying issues in *Masterpiece Cakeshop* are related to issues that we might encounter in the federal sector.

Masterpiece Cakeshop centers on a Colorado baker's decision not to bake a wedding cake. Baker and shop owner Jack Philips refused to provide any custom cake for the wedding of same-sex couple Charlie Craig and Dave Mullins. In response, Craig and Mullins filed a complaint with the Colorado Civil Rights Commission. The Colorado Anti-Discrimination Act ("CADA") prohibits discrimination in the provision of goods or services on the basis of sexual orientation (and several other categories), and Craig and Mullins asserted that Philips' refusal fell squarely within this prohibition. Philips argued that baking and decorating a cake for the wedding of an LGBTQ couple would amount to conveying a message of support for same-sex marriage. He objected to same-sex marriage on religious grounds and therefore asserted that the application of CADA to him interfered with his free exercise of religion. The Supreme Court ultimately decided the case on vary narrow grounds, focusing on the way the Colorado Civil Rights Commission reviewed and analyzed the case, and not on whether religious beliefs can excuse violations of anti-discrimination law.

Although the Commission has not issued a decision on the rights of cake bakers in the federal government, it has considered claims of religious discrimination by those who object to the celebration, or even discussion, of LGBTQ rights in the federal government. Two decisions from recent years illustrate this point. In *Complainant v. Environmental Protection Agency*, EEOC App. No. 0120150930 (May 19, 2015) and *Felton v. Environmental Protection Agency*, EEOC App. No. 0120161612 (July 12, 2016), EEOC addressed complaints that appear to be raised by the same employee. This employee asserted that the agency discriminated against him on the basis of religion when he received an agency-wide email that referenced Pride Month, and when he received an agency-wide email regarding a voluntary training on civil rights and the LGBTQ community. He had previously requested that the agency not send him emails regarding LGBTQ topics and claimed that the agency's

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failure to abide by this request was a failure to provide a religious accommodation. The agency dismissed his complaints for failure to state a claim. The Commission upheld these dismissals, finding that the complainant was not an aggrieved person for purposes of Title VII. The complainant did not suffer a loss, the emails were not sufficiently harassing to state a claim, and there was no allegation that receipt of the emails in any way burdened the exercise of his religion. At the end of the day, the Commission was not persuaded by the assertion that having to acknowledge the existence of LGBTQ people and their rights represents a harm to someone, even if it conflicts with an employee's religious beliefs. Droste@FELTG.com

Coming this summer:

REASONABLE ACCOMMODATION WEBINAR SERIES

Join us for one session, or register for them all. Series discounts available.

July 19: Reasonable Accommodation for Disabilities: The Law, the Challenges, and Solutions for Agencies

July 26: Reasonable Accommodation: A Focus on Qualified Individuals, Essential Functions, and Undue Hardship

August 2: Telework and Flexible Work Schedules as Reasonable Accommodation

August 9: Understanding Religious Accommodation: How it's Different from Disability Accommodation

Are the New Executive Orders Legal and Do They Require Immediate Changes?

By William Wiley

As most everybody knows by now, last month President Trump issued three Executive Orders aimed at the world of federal civil servants. Here at FELTG, we've already published an article on the effect these EOs have on holding employees accountable for poor performance and misconduct. We've also described for you the new limitations placed on collective bargaining; changes that reduce the union's use of official time, the scope of grievance procedures, and the options management can offer to the union during negotiations. Yes, it's a new world out there these days, whether it's a "brave" new world is yet to be determined.

In this article, we address a couple of issues related to these EOs:

Legality

At least two federal unions have filed suits in federal court to stop the implementation of the EOs. Although we've not seen all the pleadings, we have read what has been reported in the media as the rationales for the objections. With all due respect to our friends and the smart lawyers who are supporting those suits, we don't see a lot of merit to them. For a lawsuit to be viable, there must be evidence of a breach of a law or contractual agreement. We've looked hard, but we just don't see any of that. For example, one suit was reported as claiming that the EOs violated 5 USC Chapter 43 (performance-based removals) and cited to language alleged to come from that law. Yet when we read the cited reference to the statute, it does not say what the suit claims it says. If these suits are to

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be successful, it's going to take some hard work and creative advocacy to get there.

Other arguments advanced by the suits make arguments that do not make much sense. For example, because the law does not set a maximum period of time for a poor performer to demonstrate acceptable performance, it is illegal for the President to set a time limit. Or, because the law provides that official time for union officials to perform union duties can be negotiated, it is illegal for the President to limit how much time can be negotiated. I'm never the smartest lawyer in a room, but I have not seen much so far to support a conclusion that the EOs are illegal.

So far, the unions haven't filed for a temporary restraining order to prohibit implementation of the EOs. One might think they would do that if they felt they could argue significant irreparable harm.

The more practical front-line issue has to do with the requirements the EOs place on collective bargaining. Several "experts" have been quoted in the media as describing the requirements of the EOs as bargaining "objectives" rather than as Presidential "mandates." Following that logic, the President can require management bargainers not to provide free office space to unions through collective bargaining, but practically speaking, it will be up to the FMCS/FSIP stages of negotiation as to what will eventually be the language of the CBA. Those who think this way are betting on the actions of FSIP to decide what the federal workplace should look like, not for the President to make those decisions through executive fiat.

Well, here at FELTG, we are placing our bets a bit differently from those experts who represent unions and employees. Here are some well-established legal principles that have been around for 30 years or so that guide collective bargaining in the federal civil service:

1. A CBA cannot contain a provision inconsistent with federal law. If a union proposes contract language that would provide employees a benefit inconsistent with law, the management response should be, "non-negotiable." Even if the agency wanted to negotiate something different from law, it cannot do it. It is beyond debate that CBAs cannot be inconsistent with law. 5 USC 7117.
2. When laws change during the existing term of a CBA, the agency is bound immediately by that law. It may not bargain the law. It must adhere to the new law immediately, with no obligation to refrain from implementing the law until related impact and implementation bargaining is completed. (If these concepts are foreign to you, come to our *FLRA Law Week* seminar, October 15-19 in Washington, DC. They are as basic as the Earth.)
3. Many years ago, FLRA ruled that a Presidential Executive Order was equivalent to a law for collective bargaining purposes. *NFFE and Army*, 30 FLRA 1046 (1988). Although not a heavily litigated issue, this case – unless it is overturned – will be FLRA's guiding light when it is called upon to adjudicate ULPs related to these new EOs. Although FLRA members cannot be removed from office during the five-year term they are serving, with these EOs they have been publicly put on notice of how the President (the guy who hired them) wants to see collective bargaining work in the civil service.

If we accept that an EO is equivalent to a law, we need to review these EOs closely to parse out what they REQUIRE as compared to what these EOs SUGGEST; the old "shall" vs. "should" analysis. When we do that, here's a sample of what we come up with as EO mandates:

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- Performance ratings, incentive awards, and recruitment/retention/relocation payments are to be excluded from CBA grievance procedures.
- Progressive discipline is not required prior to firing an employee.
- Management must be free to use either Chapter 75 or Chapter 43 to fire a non-performer (If you don't know what these are COME TO OUR SEMINARS! Ignorance is OK; stupidity is not.).
- Generally, performance demonstration periods (i.e., PIPs) are to be no longer than 30 days.
- Clean record agreements can no longer be used to settle cases.
- Internal agency discipline and performance policies have to be rewritten to conform to the EOs by July 10.
- No free office space for the union.
- This is an odd one: Agencies are to "endeavor to exclude" removals from CBA grievance procedures. If the EO had just said "exclude," that's an easy-to-apply mandate. However, when it says "endeavor" to exclude, does that mean the agency just has to try – that the outcome of trying is left up to some other process; e.g., collective bargaining? Who knows?
- Agencies must renegotiate any CBAs in conflict with these EOs.

There's a bit more about filing reports and acting quickly in response to OPM regulatory changes. There's also a collection of "shoulds," things that agencies ought to do, but are not required to do; e.g., limit the notice period of a proposed removal to the statutory minimum of 30 days. When it comes to mandatory collective bargaining to bring existing CBAs into conformance with these new EOs that are equivalent to law, it's the "shalls" that drive the scope and timing of bargaining.

Most of this has to be implemented by July 9. So, what should you be doing TODAY? Well, you need to approach your to-dos from two different perspectives:

Non-bargaining Unit Changes – All of your discipline and performance instructions should be reviewed in light of the mandates listed above. For example, does your agency policy say that PIPs can be any reasonable length? It should now be rewritten to say that generally, demonstration periods (not improvement periods) are to be no more than 30 days. This is a mandate in the EOs.

What about the non-mandatory *shoulds* in the Eos? Will you rewrite your discipline instruction to state that, for example, the 30-day notice period for removals will not be extended beyond 30 days? What happens to you if you don't adopt the *shoulds* as policy for your agency? Oh, I don't know. Maybe ask your Secretary how he would like to tell President Trump that you're rejecting the EO's suggestions on how these policies are to read. And if you're going to do that, may we come along to watch? We'd really like to see how the President takes that.

Bargaining Unit Changes – Even though a number of our friends from the union side have opined that these EOs contain, at most, bargaining positions, here at FELTG we think that may not be correct. If an EO carries the weight of law relative to collective bargaining (see *NFFE and Army,* above), and if agencies must act promptly to bring CBAs into conformance with new laws if they are in conflict, then one might conclude that these EO mandates are now effective and need NOT be bargained. If this is correct, agencies should be amending their CBAs today and inviting unions to initiate I & I bargaining relative to negotiable parts of these changes.

Whooooo, doggies. Is this going to be exciting, or what? Better put a cover over that fan because there's going to be a lot hitting it.

And we're not done.

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The "Independent" Agencies

If you're just a regular old agency official, you have your Presidential marching orders. Now get out there and rewrite those instructions and bargain with the unions, as necessary.

But what if you're senior management in an independent (oversight) agency? We've already talked a bit about FLRA's role and precedence; how about the others?

> **FSIP** – Assuming that parts of these EOs cannot be unilaterally implemented by management and will have to be negotiated with the union, any bargaining impasse that results will have to be resolved by the seven members of the Federal Service Impasses Panel. The Panel members are political appointees, having been appointed by President Trump, and who serve at his pleasure. If they are considering two counter-proposals, one of which embodies the intent of the President's EOs and the other which does not, how do you think they will rule? Yep, that's our prediction, as well.
>
> **MSPB** – Some of the things that the EOs are trying to "fix" are prior declarations in rulings of the US Merit Systems Protection Board. For example, it was in 2010 that MSPB that came up with the stupid Terrible Trilogy comparator employee craziness that said that discipline had to be consistent throughout an agency, not just within the chain of command invoking the discipline. The EOs say that this is no longer the rule, that lesser discipline given to a comparator does not prohibit the removal of a different employee. Unlike the members of FSIP, the Board members do NOT serve at the will of the President. Once sworn in, they can be removed only for inefficiency, neglect of duty, or malfeasance in office, 5 USC 1202(d). Will they conform their decisions to the principles espoused in the EOs? Will the President require that potential nominees promise to do that or he will not nominate them? Will the Senate confirm nominees who have promised the President to conform their decisions to his orders?

Whoooooo, doggies.

So many questions, so many opinions. We admit to not knowing a lot of the answers here at FELTG, but we swear on a stack of CFRs, we will do the best we can to keep you up on changes, suggesting strategies and options for you to consider, and maybe even predicting a few things that eventually will come true. So, pay your FELTG dues, renew your subscription to our newsletter, and buckle your seatbelts. The next several months are definitely going to be a bumpy ride. Wiley@FELTG.com

COMING TO ATLANTA

Developing & Defending Discipline: An Accountability Seminar
September 26-28

Attention supervisors and advisors: join FELTG at the Marines' Memorial Club in San Francisco for a three-day seminar on all you need to know to help your agency take defensible performance- and misconduct-based actions.

This program is one of our most popular and is a must-attend if you have a challenge with even one federal employee in the federal workplace. From performance and conduct to leave abuse to whistleblower reprisal to defending against frivolous EEO complaints, we've got you covered.

Registration is still open but space is limited. Bill and Deb will see you there!

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The Two Sides of EEO Reprisal Protections: Participation and Opposition
By Deborah Hopkins

Reprisal is a word that strikes fear in the hearts of supervisors everywhere. Indeed, we've seen a few cases where seemingly-minor behaviors were found to be EEO reprisal. For the purposes of this article, we'll define reprisal as adverse treatment of an individual who engages in protected activity. Adverse treatment is much broader than adverse actions; it applies to any undesirable treatment, including things that would not constitute personal injury under EEO antidiscrimination statutes.

A lot of federal supervisors and advisers know that the law protects people for participating in the EEO process in any way, but many miss the other side of protection: the opposition side of EEO activity. Let's look at both. But first, as we do here at FELTG, let's look at the law.

> It shall be an unlawful employment practice for an employer to discriminate against any employees or applicants . . . because he has *opposed any practice* made unlawful by this subchapter, or because he had made a charge, testified, assisted *or participated in* an investigation, proceeding or hearing . . .

42 USC § 2000e-3 (*emphasis added*).

Participation Clause

The following things are considered participation in protected EEO activity, and employees who engage in these activities are protected from reprisal.

- Contacting an EEO counselor
- Filing a formal EEO complaint
- Testifying at an investigation or hearing
- Providing documents to a complainant
- Requesting a reasonable accommodation

There probably aren't any surprises on that list. However, the participation clause of the law goes much further, as we see in the case law. Read on.

- Filing a frivolous EEO complaint is participation, as is contacting an EEO counselor with no intent to file a complaint. *Hashimoto v. Dalton*, 118 F.3d 671 (9th Cir. 1997), cited in EEOC Compliance Manual §8-11(C)(2).
- A witness doesn't need to actually testify in order to be protected. Being named as a potential witness is participation for the purposes of reprisal protection. *Green v. Navy*, EEOC Appeal No. 01964701 (1997).
- Representing a complainant is participation, and action taken against a representative aggrieves the complainant and may be considered reprisal. *Larson v. Secretary of Navy*, EEOC Appeal No. 01983075 (1999).
- Even having a close association with individuals who file complaints is a protected activity. The seminal case on this involved an engaged couple. The company fired the complainant's fiancé in reprisal, and the Supreme Court said, "We think it obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired." We don't know the extent of association, though; the Court declined to "identify a fixed class of relationships for which third-party reprisals are unlawful." Best practice: don't push it. *Thompson v. Northern American Stainless, LP*, 131 S. Ct. (2011).

There is a limit to the participation clause, though: an employee can't go storming off workroom floor in search of counselor in defiance of supervisor's order, and if he does, disciplining that employee is not reprisal for

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protected activity. *Butler v. Postmaster General*, EEOC Appeal No. 01872877 (1988).

Having fun yet?

Opposition Clause

The *EEOC Compliance Manual*, 8–II(B), tells us that an individual is protected from reprisal if that individual explicitly or implicitly communicates to her employer a belief that an activity constitutes a form of employment discrimination under the statutes enforced by EEOC. This opposition must strike a balance between a supervisor's need for a stable and productive workforce, the rights of individuals to oppose discrimination, and the public's interest in enforcement of EEO laws.

Frivolous opposition is not covered, though. The Opposition Clause has three requirements, and an employee must meet at least one. An employee sets forth a proper claim if:

a) A challenged employment practice violates Title VII;
b) She possessed a good faith, reasonable belief that it did; or
c) She possessed a subjective, good faith belief that Title VII was violated by the practice.

Mattern v. Postmaster General, EEOC Appeal No. 01850054 (1986).

So, a comment such as an employee's vague assertion, "All these agency managers are a bunch of white supremacists" is likely not enough to trigger the protection of the opposition clause.

But, examples of covered opposition include *specific* complaints about employment practices to:

- Managers or supervisors
- Union officials
- Coworkers
- Reporters
- Congresspersons

So, hopefully now you know more about reprisal. For more on this topic, join us for *EEOC Law Week* offered next September 17-21 in Washington, DC. Hopkins@FELTG.com

Tips from the Other Side: LGBTQ Terminology and Concepts
By Meghan Droste

"The difference between the almost right word and the right word is really a large matter—it's the difference between the lightning bug and the lightning." Mark Twain's excellent note on word choice is a lesson we can all learn from both in the realm of EEO complaints and in the broader world. Using the correct language to refer to our colleagues and to individuals we encounter in the EEO process is an important sign of respect and also a concrete step that agency employees can take to avoid EEO complaints. The following terms and their definitions are a good start towards this goal.

Birth sex: The sex that is assigned to an infant at birth. This assignment is based on the presence or absence of the infant's external sex organs. We generally do not talk about our sex organs at work so please do not ask anyone what their birth sex is, or what they were born as, or whether or not they are "really" a man or a woman.

Gender identity: A person's internal sense of being male, female, or somewhere else on the gender spectrum. We all have a gender identity and we convey it to the world through our gender expression.

Gender expression: The ways in which a person communicates his/her/their gender identity to everyone else. This can include hairstyle, clothing, and mannerisms.

Transgender: This is an umbrella term that is most often used to describe people whose gender identity is different than their birth sex.

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The more common form is now "trans." Do not use the word "transgendered" or refer to someone as "**a** transgender;" instead say that the person is transgender or that the person is a trans/transgender man or trans/transgender woman.

Gender confirmation: Also known as transition, this is the process by which a person modifies his/her/their gender expression and/or physical characteristics to be consistent with his/her/their gender identity. Gender confirmation is not a one-size-fits-all process—it can take many forms and does not always include surgery or other medical intervention.

Cisgender: A person whose gender identity is the same as his/her birth sex.

Preferred pronouns: The pronouns—he/him/his, she/her/hers, they/them/theirs—that an individual prefers to use and prefers that others use. It is acceptable (and can be very helpful) to ask someone to specify his/her/their preferred pronouns. And yes, this includes the singular form of "they."

Misgender: Intentionally referring to someone by the wrong gender, name, and/or preferred pronouns. The Commission has held that misgendering an employee can be a form of harassment.

Sexual orientation: A person's emotional, romantic, and/or sexual attraction to other people based on the sex of the other person. We all have a sexual orientation, and it is not dictated by our gender identity or gender expression. In other words, being trans does not define a person's sexual orientation.

We should all do our best to use the correct terminology when referring to others. Of course, mistakes can happen. If you make a mistake, simply apologize and do your best to ensure it does not happen again.

If you have questions or want to learn more about these topics, join me in November for a webinar covering terminology, cases, and guidance on issues related to sex discrimination and LGBTQ discrimination in the federal sector.

If you have specific questions or topics you would like to see addressed in a future Tips from the Other Side column, email them to me: Droste@FELTG.com

Understanding and Supporting the Bipolar Employee
By Shana Palmieri

Have you ever noticed an employee or coworker who seems to have severe mood swings? I'm not talking about normal good day/bad day fluctuations, but episodes where the person is so hyperactive you can't slow him down, or so depressed that she won't even bother to show up for work? There's a chance that this person might have one of the Bipolar Disorders.

Bipolar Disorder(s) are estimated to impact 2.8% of the adult population in the United States in any given year. The affected individual typically starts to experience symptoms of Bipolar Disorder in their early to mid-twenties, the typical age at which young adults are transitioning from education into the workforce.

What is Bipolar?

Bipolar Disorders are brain disorders that cause significant changes in an individual's mood, energy level, and ability to function, that are not typical for the individual. It is normal for people to have fluctuations in mood and energy levels in response to life events and stressors. For example, most individuals will

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feel sad at the death of a loved one, after a break-up, or during a stressful period at work. At the opposite end of the spectrum, it is normal for individuals to experience feelings of elation, joy, and happiness in response to events like falling in love, getting a promotion, or the excitement before a much-anticipated vacation.

The difference with individuals who have bipolar disorder is that the changes in mood and energy levels:

- Are the result of chemical brain changes;
- Occur during distinct periods of time, which are referred to as a "cycles" or "episodes"; and
- Are much more intense and severe in nature than mood and energy changes in unaffected people.

So, while manic or depressive episodes can be triggered by stressors in the individual's life, the mood and energy changes are significantly impacted in bipolar disorder by brain changes that individuals without bipolar disorder do not experience.

There are three types of bipolar disorder and many additional subtypes for each disorder. The type of bipolar disorder that an individual is diagnosed with will determine the level of impairment on the individual's ability to function, and the impact the person's behavior might have in the workplace.

Sometimes it can be a bit difficult to conceptualize the difference between bipolar disorder and normal mood/energy changes, since we all have fluctuations in our mood and energy levels – one of the reasons why bipolar disorder can at times be complicated to diagnose. However, when an individual has bipolar disorder, her fluctuations in mood and energy level are extreme and she often lacks the ability, without intensive treatment (often including medication), to bring her energy level and mood back to a "normal" level.

A few examples of the types of symptoms individuals diagnosed with a bipolar disorder may experience include:

- Sudden changes in mood (elevated, expansive or irritable mood)
    - This change in mood typically lasts at a minimum, 4 to 7 days
- Excessive energy beyond reason (the individual may sleep as little at 1-2 hours a night, and will continue to have excessive amounts of energy the remainder of the 24-hour period)
- Inflated self-esteem or grandiosity (the individual suddenly believes they are famous)
- Changes in sleep patterns (during a manic episode sleeping as little at 1-2 hours a night)
- Rapid speech, increased talkativeness
- Disorganized thinking
- Increased goal-directed activity (the individual may be highly productive for a period of time)
- Increased risky and impulsive behavior (hypersexual behavior, unusual spending sprees, gambling)
- Psychotic symptoms (an impaired sense of reality)
- High levels of irritability (impulsive aggression may be present during a manic phase)

Bipolar disorder unfortunately causes the highest percentage of serious impairment among all mood disorders, and when diagnosed with the more severe type of the illness, individuals often have distinct episodes in which they require intensive treatment and impaired function in the workplace.

What is the impact of Bipolar Disorder in the Workplace?

The type of bipolar disorder the individual is diagnosed with will determine the impact within the workplace. Individuals with Bipolar

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Disorder often have the most significant impairment when experiencing an acute manic episode. Individuals that have bipolar disorder cycle in and out of acute episodes. In between these episodes, individuals may experience a return to their baseline with no or limited symptoms present. However, during an episode an individual may need time away from work during a hospitalization until his symptoms are stabilized enough to allow him to function well in the workplace.

Mental illness tends to be stigmatized and judgements are often made about employees who need to take time away from work for treatment of a mental health condition. But in reality, there is no difference in the need to take time off from work to allow your body to recover from the flu as there is from the need for an individual to take the time off work to recover from a manic or depressive episode.

Is Bipolar Disorder Real?

There is a common misperception that mental health disorders are not a real or are caused by personal weakness. Research and scientific evidence has demonstrated that bipolar disorder creates significant changes in the brain and have a genetic link. In fact, if an individual has a first-degree relative with bipolar disorder, they are ten times more likely to also have the disorder.

It is extremely important for individuals with symptoms to be properly diagnosed and to receive treatment under the care of a medical professional, as bipolar disorder is associated with significant life-threatening risk. It is estimated that 1 in 5 individuals with bipolar disorder complete suicide and individuals with bipolar disorder are estimated to have a 9.2 year reduction in life expectancy as a result of co-occurring medical conditions and increased risk of suicide.

How can Employers Create Opportunities for Success for Employees with Bipolar?

Despite the impairments that bipolar disorder may cause an individual, make no mistake: these individuals can be a true asset to any organization, similar to any employee who does not have the bipolar diagnosis. Agencies will benefit from understanding how to support individuals with bipolar disorder and creating opportunities for employees to perform at their highest potential.

- Ensure all supervisors, managers and human resources staff are educated on the symptoms of bipolar disorder.
- Learn to recognize the warning signs that an employee is struggling and provide support and guidance to help them access treatment options.
- Engage in the Reasonable Accommodation process after a request for accommodation has been made.
- Encourage and support employees in accessing EAP and appropriate mental health services.
- Implement programs through HR or EAP that promote mental wellness and stress reduction.

Join FELTG for a webinar on Managing & Supporting the Employee with Bipolar Disorder, June 20. Info@FELTG.com

[Looking for Bill's No. One favorite f-word? Look no further. It's "forgiveness." Accept apologies and move on. Life's too short to be offended about things all the time.]

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