

No Letup In Sight As Anxiety-Related EEOC Charges Mount

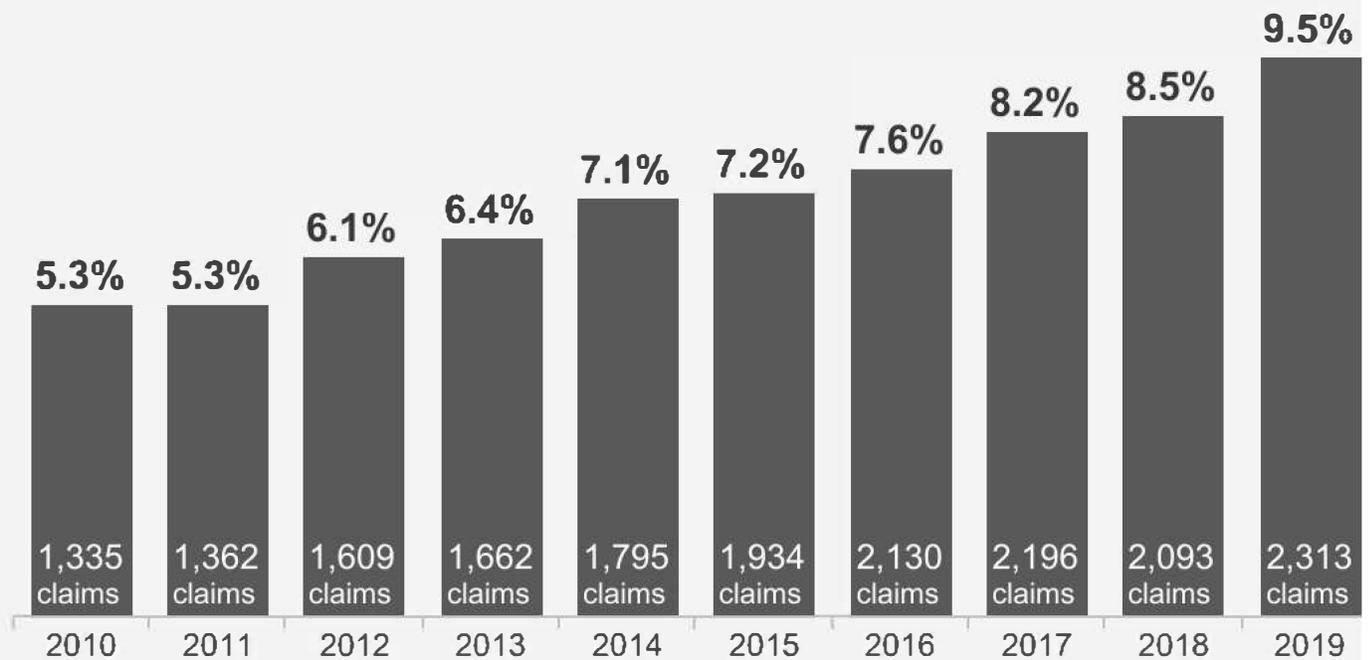
By Anne Cullen

Law360 (April 26, 2022, 6:03 PM EDT) -- Workers have been claiming they faced discrimination at work based on anxiety disorders with increasing frequency over the past decade, according to U.S. Equal Employment Opportunity Commission charge data, a trend experts expect to continue as pandemic-related stressors linger.

Last year, more than 2,600 workers lodged anxiety-related disability discrimination charges with the EEOC, making up nearly 12% of the total Americans with Disabilities Act filings the agency received last year. These figures also represent close to a 65% jump from the number of ADA filings citing anxiety disorders that employees brought to the agency a decade ago.

Employers Face Rise In ADA Anxiety Charge

Over the past two years, record-high numbers of workers claimed they faced at work because of their anxiety disorder, with these claims representing nearly total disability bias charges filed with the EEOC in 2021.



Source: U.S. Equal Employment Opportunity Commission

Anxiety disorders refer to a category of conditions with symptoms distinct from normal feelings of nervousness or anxiousness, like extreme worries or fears that reoccur, according to the National Institute of Mental Health. Panic disorder, social anxiety disorder and phobias fall within this category.

Mental wellness has become a busy legal area for the EEOC, and Commissioner Andrea Lucas told Law360 **earlier this month** that claims of disability bias based on workers' mental health are about to rise even further. Citing the fallout from the pandemic as well as the rise in social media use, Lucas said mental health-related ADA claims "are going to start to explode into the public's sight soon."

While these kinds of disability claims have been rising steadily for years, experts said COVID-19 accelerated the trend. Between October 2019 and September 2021, the EEOC received just over 3,800 charges alleging violations of the ADA related to the pandemic, with more than 300 of those referencing anxiety disorders, according to a spokesperson for the agency.

"We've seen a huge uptick in the number of potential or prospective clients calling us since the pandemic began with regard to either mental health issues in general, or anxiety and PTSD," said Andrew Friedman, a partner at Helmer Friedman LLP who represents workers.

Despite the bleak prognosis, legal experts say there are several steps company leaders can take to accommodate employees with anxiety disorders to ensure they feel supported at work, and that their job doesn't worsen their condition.

Respect Off-the-Clock Time

The widespread shift to telework during the pandemic softened the distinction between home and work, and legal experts said this prompted some supervisors to begin imposing on team members' personal time.

"With the pandemic and people working from home, there's been an enormous blurring of the lines for employers about the propriety of contacting employees off-duty," Friedman said.

Someone with an anxiety disorder can have a persistent feeling of anxiety or dread, feel on edge and be easily fatigued, the National Institute of Mental Health has said. For anxious workers, it can be a major source of stress to have a supervisor emailing, calling and texting them at all hours, Friedman said.

He told Law360 that it was a common theme in the anxiety-related prospective client calls his firm has received during the pandemic, as workers facing this kind of management often feel obligated to be consistently available.

"Obviously, there were always jerky bosses who felt free to contact employees off-duty, but with the pandemic, more bosses felt free to contact employees 24/7, and employees felt compelled to respond 24/7," Friedman said.

One way for company leaders to avoid exacerbating a worker's mental health issues is to honor their off-duty time, Friedman recommended. "Applying common sense is always a good approach," he said.

Be Flexible and Fair with Telework

Another root of many workers' anxious feelings are employers' efforts to bring team members back into the office, said Lindsey Davis, a management-side employment partner at Quarles & Brady LLP.



Lindsey Davis
Quarles & Brady

"There's a whole category of employers who are bringing employees back, and that's another huge transition that we're asking employees to go through, which is causing stress and anxiety," Davis said.

Legal experts suggested several ways that company leaders can assuage workers' concerns about returning to work in person.

First and foremost, employment attorneys recommended that company leaders preserve existing remote arrangements where they make sense, like in situations where workers have proved they are productive at home and say teleworking eases their anxiety.

"Allowing remote work or allowing additional remote work is something that employers do need to consider," said Ann Marie Painter, the firmwide labor and employment chair at Perkins Coie LLP.

Supervisors can also consider moving someone's shift to a time frame that might help them manage their anxiety, put them on a part-time schedule, or have them work only a few days in the office, legal experts suggested.

"You need to meet people where they are. Be more flexible with regard to letting people deliver the work how they need to," said Robert D. Dinerstein, a professor of law at American University's Washington College of Law and the director of the Disability Rights Law Clinic.

In situations where an employee will be returning to the office, Perkins Coie's Painter said another potential fix is curating the workplace to match some of the comforts the employee felt at home, like creating a private space for workers with anxiety to manage their symptoms.

"People have reworked their workspaces during the COVID environment," Painter said. "To the extent that there are spaces where people can go if they are experiencing anxiety or stress in the workplace, it may allow them to feel they can be in private and cool down a little bit."

The Job Accommodation Network, a U.S. Department of Labor service, backs this recommendation for workers with an anxiety disorder, as it says people who have panic attacks, for example, may need a private space to rest and calm down before returning to their desk.

Those prescribed medication for an anxiety disorder may want a private area to take this treatment during the work day, JAN has also said. Regardless of the return-to-office approach, higher-ups should also make sure they're holding themselves to the same standard as their team members, Friedman added.

The worker-side attorney said he's seen employees feeling particularly anxious because they're being recalled while their bosses are maintaining more flexible schedules. "A lot of employees are complaining that there's a double standard," Friedman said. "The bosses are forcing them to come to work, but the bosses still feel free to work remotely."

Offer Mental Wellness Services

Perkins Coie's Painter said employers should consider bolstering their benefits packages to offer services that support their staff's mental health. "Adding wellness tools to the suite of benefits offered can assist people in daily coping," Painter said, like a meditation app or therapy coverage.

Some employers are already considering this step, as the results of an Employer Health Benefits Survey released late last year by the Kaiser Family Foundation found nearly 40% of employers revamped their health plans since the start of the COVID-19 pandemic to offer mental health services.

About a third of those who said they made updates increased the ways members can access mental health services, like through telemedicine, and about 16% of this group offered new mental health resources, such as an employee assistance program, according to the survey.

An employee assistance program is an intervention program offered by an employer that is designed to help workers resolve personal problems, like substance abuse or financial hardships, that could be hurting their ability to do their job. "These tools can be used to help lower stress and anxiety," Painter said.

It's also important to ensure employees know what resources are available and how to access them, added Quarles & Brady's Davis.

"A lot of times, you inform employees about these resources during their orientation when they start with the company, but then you might not hear much about it after that, and people just forget what resources are out there," Davis said. "In a situation like this, it's to their benefit to remind employees what benefits are available to them."

—Additional reporting by Vin Gurrieri. Graphic by Jason Mallory. Editing by Haylee Pearl.