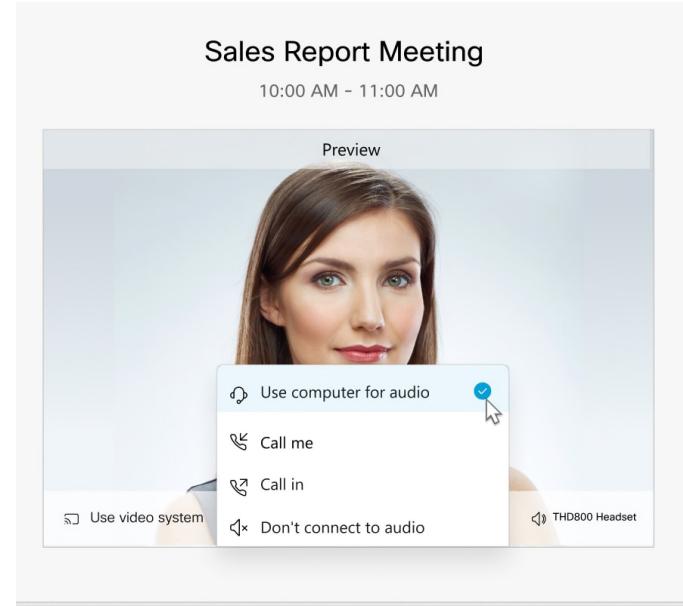
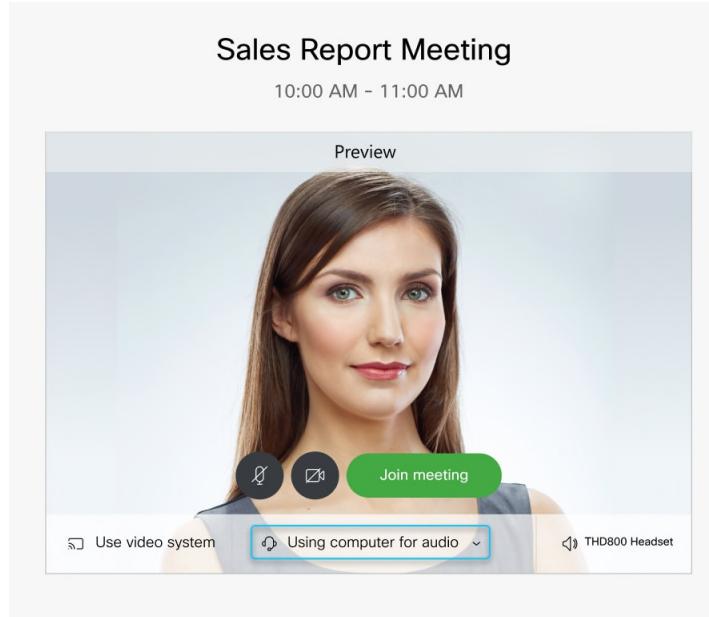


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# An Employer's Guide to Supporting Employees' Mental Health During A Pandemic

Presenter: Brian J. McGinnis

# What Are We Talking About?

- Context/data about mental health in the workplace
- Federal vs. state/local laws
- I'm just a lawyer!
- Additional resources/ongoing education



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# Mental Health: Data

- Nearly 1 in 5 American adults will have a diagnosable mental health condition in any particular year
- Nearly 46% of Americans will meet the criteria for a diagnosable mental health condition sometime during their lifetime
  - About half of these people develop condition(s) by age 14
- American examples
  - Anxiety conditions: 32% lifetime prevalence; 42.5 million affected
  - Bipolar condition: 2.5% lifetime prevalence, 3.3 million affected
  - Post-traumatic stress: 6%, 12 million affected
  - Major depression: 7.1%, 17.3 million affected
- Reported vs. unreported (stigma)



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## More Context

- 24% of adults struggling with mental health reported an unmet need for treatment
- Marginalized communities report higher rates of mental health challenges
  - LGBTQ+
  - Intersections of multiple identities
  - Not inherent; result of social, political, economic, structural prejudices
- The role of stigma



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# **COVID-19 & Mental Health**

- COVID-19 has made things much worse
  - One organization reported a 93% increase in anxiety screen, and a 62% increase in depression screen vs. 2019
- Trauma (individual and collective)
- Fear of infection
- Fear(s) related to caring for self or others
- Mental health effects (acute and chronic)
- Increased loneliness and isolation
- Exacerbate pre-existing mental health challenges or create/trigger new ones



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# Mental Health in the Workplace

- Trouble concentrating or completing/prioritizing tasks
- Insomnia
- Overwhelming stress/anxiety
- Loneliness/isolation
- Burnout/exhaustion
- Depression
- Post-traumatic stress



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# **Employer Considerations**

- Legal obligations
- Lawsuit risks
- Corporate citizenship
- The business case



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# Employers' Legal Obligations

- Americans with Disabilities Act (and state law)
- Family and Medical Leave Act
- Paid Sick Leave laws (state/local)
- Contractual Rights (leave/other benefits)
  - Individual Employment Agreements
  - Collective Bargaining Agreements
  - Role of Employer Policies



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# Americans with Disabilities Act

- ADA
  - Private employers with 15 or more employees for 20 or more calendar workweeks in the current or preceding year
    - State law may have more expansive coverage thresholds!
  - Disability
    - Physical or mental impairment that substantially limits one or more major life activities;
    - A record of such an impairment; OR
    - Being regarded as having such an impairment



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# A Word About Impairments

- Impairment → not determined by the employer
- Major life activity
  - Breathing
  - Walking
  - Caring for oneself
  - Reading, concentrating, thinking
  - Brain function
  - Etc.
- ADAAA amendments



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# **ADA Obligations**

- Non-discrimination
  - Hiring/firing, discipline, promotion, etc.
- Non-retaliation
  - Exercise of employee rights
- Reasonable accommodation



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# **ADA – Reasonable Accommodations**

- Employers must provide a reasonable accommodation to employees with disabilities that would enable them to perform the essential functions of the job
- On notice/no “magic words” required
- Interactive process
  - Dialogue
  - Meaningful, good-faith
  - Medical documentation



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# **Common Considerations with ADA Accommodations**

- What are the “Essential” Functions?
  - Job descriptions vs. facts on the ground
  - Are they really “essential”?
  - Inertia is not your friend
- Attendance
- Employee Performance Standards
  - “How can we help?”
- Reasonable/Effective Accommodation & Employer Choice
- Undue Burden & Direct Threat



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# Potential Accommodations for Employee Mental Health Challenges

- Job restructuring
- Reassignment to a different position
- Modified schedules
  - Different start/end times
- Paid/unpaid leave
- Telecommuting
- Context-specific, creative solutions



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# FMLA/Paid Sick Leave

- Family and Medical Leave Act (FMLA) Considerations
  - Eligibility
    - Employer: 50+ employees for 20 or more calendar weeks in current or preceding year
    - Employee: employed for 12 months, worked at least 1,250 hours
    - Exclusions: < 50 employees at worksite or < 50 employees within 75 miles of worksite
    - Care of self, spouse, parent, or child with a serious health condition
    - SHC is a regulatory definition, includes chronic conditions (e.g., depression) in certain circumstances
  - Up to 12 weeks of leave in a 12-month period
  - Continuous/intermittent
  - Paid/unpaid leaves
  - State equivalents
- Paid Sick Leave (state/local)



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# Practical Tips

- Train managers and Human Resources to use inclusive language, not to stigmatize, and not to make assumptions
  - These are the “front line” people your employees will be contacting
- Listen and have a dialogue with employees
  - The importance of flexibility and creative, collaborative solutions
  - The danger of inertia
- Importance of having commitment from top leadership
- Importance of regular and ongoing education/training
  - Not just “check box” training
  - Incorporate into the DNA of the workplace



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# **More Practical Tips**

- Regular review of personnel/management structures
  - Job descriptions
  - Employee Workloads
  - “Essential” Functions
- Mental health-related employee benefits
  - Availability (generally and by job classification)
  - Covered services
  - Coverage levels
- Policy changes
- Creating a stigma-free culture
  - Encouraging use



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## **Even More Practical Tips**

- Communicate, communicate, communicate
- Wellness Programs
- Social “substitutes”
- EAPs/ERGs
- Role of PTO/vacation benefits
- Career Advancement Decisions
- No one-size-fits-all solutions



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# Additional Resources

- If you or someone you know is in crisis:
  - The National Suicide Prevention Lifeline (1-800-273-8255),  
<https://suicidepreventionlifeline.org/>
  - The Crisis Text Line (text HOME to 741741),  
<https://www.crisistextline.org/>
  - The Trevor Project Lifeline (1-866-488-7386, text TREVOR to 1-202-304-1200, or online chat at <https://www.thetrevorproject.org/get-help-now/>)
  - The Trans Lifeline (1-877-565-8860), <https://www.translifeline.org/>



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# Additional Resources

- United States Equal Employment Opportunity Commission [www.eeoc.gov](http://www.eeoc.gov)
- US Department of Labor, Mental Health Resources  
<https://www.dol.gov/agencies/odep/program-areas/mental-health>
- American Psychological Association Help Center <https://www.apa.org/helpcenter>
- The Trevor Project Support Center  
[https://www.thetrevorproject.org/trvr\\_support\\_center/mental-health/](https://www.thetrevorproject.org/trvr_support_center/mental-health/)
- National Center for Transgender Equality Resources  
<https://transequality.org/additional-help>
- National Alliance on Mental Illness, LGBTQI  
<https://www.psychologytoday.com/us/therapists>
- Psychology Today, Practitioner Search  
<https://www.psychologytoday.com/us/therapists>
- Apps: Calm, Moodpath, etc.



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# **Questions/Comments?**



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