

Kathleen Martin is an attorney with O'Donnell, Weiss & Mattei, P.C., and a newspaper columnist for The Mercury, which gave permission for this article to be reprinted.

February 17, 2019

Number of older workers can force employers into frank talks

Much has been written about the aging population, and how workers are continuing their employment past "normal" retirement age, sometimes for many years beyond what used to be the typical retirement age of 65 years. However, as individuals age and continue to work into their 70's, 80's and even 90's, dementia can rear its ugly head as the incidence of dementia increases with age. This creates a dilemma for employers who begin to notice that long term workers are starting to struggle; the worker may not even be aware. The *Washington Post* recently published an article about this issue "Companies Navigate Dementia Conversations with Older Workers."

Cognitive decline can occur many years before it is obvious that a worker has dementia. The worker may struggle with tasks that used to be easy, may get lost on the morning commute, or forget about scheduled meetings. The worker and family may not recognize any type of decline until the worker is fired for performance issues. It is a source of frustration for both employer and employee. Aging does not automatically result in cognitive decline, but dementia is increasingly likely as one ages. The Bureau of Labor Statistics estimates that the number of U.S. workers will grow exponentially for those between the ages of 65 and 74 (balloon to 55 percent between 2014 and 2024) with an 86 percent growth of workers over age 75 years.

Communication between the employer and employee is very important. Many times employees do not want to reveal a diagnosis that indicates impaired cognition for fear of stigmatization or even termination. However, the Americans with Disabilities Act (ADA) covers individuals with Alzheimer's disease and other particular forms of dementia depending upon the individual's level of impairment and position in the company. Accommodations can be considered such as written instructions rather than verbal ones or reassigning a heavy machine operator to a desk job. The key question is whether there is work that the employee can safely do. An individual must be able to perform the essential functions of his or her job in order to be protected under the ADA. A motivated employer and motivated employee can work together to find a compromise in many cases but not if there is a failure of communication.

The author of the article, Andrew Soergel, quotes a former human resources executive who was diagnosed at age 58 with early onset Alzheimer's disease and Lewy body dementia. Unfortunately, some workers beg their doctors to remove any mention of their diagnosis or potential diagnosis from their records. This is short sighted as such behaviors can affect the ability to apply for Social Security Disability and short term disability from their employer. Open and honest communication between employer and employee does not work in all instances but having the employee discuss his or her personal reasons for continuing to work can be more productive than attempting to hide the cognitive decline. The article has specific examples that many might find helpful.