

Posttraumatic Stress Disorder and Employment Litigation

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Based on **Gold, LH**: PTSD in Employment Litigation. In Simon, RI (Editor): *Posttraumatic Stress Disorder in Litigation: Guidelines for Forensic Assessment*, 2nd edition. American Psychiatric Publishing, Inc., 2002

Claims of Posttraumatic Stress Disorder (PTSD) are often made in employment litigation, and mental and emotional injuries may constitute the bulk of an employer's exposure. Psychiatric evaluation of PTSD claims in employment litigation often demonstrates that such claims are not supportable. When a damages claim includes a diagnosis of PTSD that cannot be substantiated, plaintiffs' attorneys may have placed their client's case in jeopardy and defense attorneys have an opportunity to cast doubt on all mental health damages claims, and perhaps even the plaintiff's credibility.

An adverse workplace event or events, whether actionable or not, cannot typically serve as the basis for a claim of PTSD. Whether making or countering claims of damages related to PTSD, attorneys should understand that PTSD is not necessarily an inevitable psychiatric outcome of any adverse event a person may experience. Mental health professionals do not accept as axiomatic that every upsetting, distressing or even traumatic event results in a psychiatric disorder. Even individuals who have undergone a traumatic stressor typically have only an approximate 15% incidence of PTSD.

Most unsupportable claims of PTSD in employment litigation fail based on the first criterion defining the disorder, that of the definition of a traumatic stressor that could result in PTSD. The Diagnostic and Statistical Manual (5th edition) (DSM-5), published by the American Psychiatric Association (2013) defines PTSD with eight criteria. Discussions of the other seven criteria are moot if a person has not been exposed to a traumatic stressor capable of resulting in this diagnosis. Thus PTSD's first diagnostic criterion should be thought of as the "gatekeeper" for a PTSD diagnosis.

All traumatic experiences are stressful; however, not all stress is traumatic. A traumatic stressor, as defined by the DSM-5, requires "Exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways:

1. Directly experiencing the traumatic event(s).
2. Witnessing, in person, the event(s) as it occurred to others.
3. Learning that the traumatic event(s) occurred to a close family member or close friend. In cases of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental.
4. Experiencing repeated or extreme exposure to aversive details of the traumatic event(s) (e.g., first responders collecting human remains; police officers repeatedly exposed to details of child abuse).

Events can occur in the workplace that meet this definition of a traumatic stressor. These might include being the victim of a fire, motor vehicle or other workplace accident, physical

or sexual assault, a criminal or terrorist attack, or frightening or dangerous events of similar magnitude.

Although such events occur more often than we would like, allegations in employment evaluations typically do not often involve physical or sexual violence or danger to life and limb. They more often include claims of discrimination, adverse employment actions, loss of employment, and/or retaliation. The behaviors that characterize these experiences do not typically constitute traumatic stressors capable of resulting in PTSD. The DSM-5 gives specific examples of the kinds of interpersonal events that could constitute a traumatic stressor, such as intentional torture or sexual violence.

The kind of workplace events for which individuals bring Title VII or other related legal complaints are unlikely to result in a diagnosis of PTSD. Supervisors may yell or insult employees, verbally bully employees, throw papers or shake fingers at employees, or fairly or unfairly criticize employees' work. Employees may experience adverse events such as termination, involuntary transfer, or denial of a promotion. These experiences, especially when repeated over extended periods of time, are extremely upsetting and may even be actionable.

Nevertheless, such experiences are more accurately characterized as severe occupational stress than traumatic stressors. Occupational stress can have physical and psychiatric health consequences and can potentially result in an anxiety or mood disorder, such as panic disorder or major depression. Adverse occupational events can also result in time limited Adjustment Disorders. These types of disorders more likely to result from occupational stressors, adverse occupational events, and even harassment or discrimination. Moreover, such disorders are more easily defended than an erroneous PTSD diagnosis, which may bring all of the plaintiff's emotional distress claims into question.

Unfortunately, the plaintiff and often the plaintiff's mental health treatment providers may refer to adverse employment or even illegal harassment or discrimination events as "traumatic." Plaintiff and treatment providers alike mistakenly characterize any emotional distress following such adverse employment events as PTSD. Unless a plaintiff has experienced a non-work related traumatic stress (alternate cause) or has pre-existing vulnerability to developing PTSD, the use of such terminology is inaccurate. In litigation, the use of such terminology is misleading and easily undermined by a knowledgeable defense expert, especially when treatment providers also provide expert witness testimony for their patients or clients.

Some particularly vulnerable individuals under certain circumstances can develop PTSD without meeting the traumatic stressor criterion. In addition, the more vulnerable the victim, the less severe the stressor needed to precipitate PTSD. Typically, however, the further the traumatic event strays from the gatekeeper criterion, the greater the burden for the claimant to demonstrate how the exposure met the definition of a traumatic stressor. Reported feelings of horror, fear of death, or physical injury in response to the types of

common occupational stressor or workplace adverse events raise issues of hypersensitivity rather than traumatic exposure.

Without meeting the gatekeeper criterion, a claim of PTSD proximately caused by the alleged workplace event is unlikely to succeed. Plaintiffs attorneys should avoid weakening their client's cases by alleging PTSD if the workplace event simply does not rise to the level of a traumatic stressor. If the claim is relatively easily disproven by applying the gatekeeper criterion, any other emotional damage claims, even if legitimate and supportable, become less credible. Defense attorneys should be wary of becoming focussed on the PTSD diagnosis and its implications regarding causation. Instead, they should explore whether the psychiatric basis of the PTSD claim is sound, beginning with the validity of the alleged traumatic stressor.

