

Psychological Issues in the Workplace

By **STEPHEN P. SONNENBERG, ESQ.**

A friend recently asked me, “How are people acting in mediation these days? Are they acting normally?” It made me realize that I wasn’t so sure what normal was before the pandemic. But now I’m more certain.

Normal nowadays, for many of us, involves dealing with a good amount of anxiety. By “anxiety,” I mean something on a scale ranging from worry to outright fear. I mean that thought that crops up more now than before: “What’s going to happen next?” Normal nowadays involves dealing with rules for living and working that can change dramatically over short periods of time.

There’s no need to wear a mask. Wearing a mask will help save lives.

Working from home is allowed only on a limited basis. All employees will be working from home for the foreseeable future.

Working hours were often normal business hours. Now, they are different and for some employees they are longer, more scattered, less rigid.

Coffee in the break room mid-morning, drinks with work friends

after work and dinner with clients were all common events. Now, they are rare.

Normal was sending the kids off to school each weekday morning before work. Now, in many areas, children are remaining at home and engaging in distance learning.

Normal was, for some, working in bustling workplaces with shared workspaces, cubicles and desks. Now, this has all changed.

Normal now is changed rules. Normal is not knowing quite what our workplace and our workday will look like in 2021 and beyond. Normal now, for many, is worrying about whether we’ll get ill, and whether our jobs and employers will survive.

So the answer to my friend’s question—are people in mediation acting normally?—is yes, but it’s not the normal I once knew. It’s a different normal. And yet I’m impressed every day by how the people I work with through my new work normal— video-conference mediations— adapt to and cope with change. If someone’s Wi-Fi slows momentarily or inexplicably cuts out for a few minutes, the people on my video-conferences deal with it. If a child cries out in the background,



STEPHEN P. SONNENBERG, ESQ.

a cat hops up onto a desk and blocks the camera or there is noise from construction or gardeners outside, we deal with it. If an employee in a mediation needs to appear from the inside of her automobile on her cell phone for video and audio because her apartment is too cramped and noisy, we deal with that too. We adapt. We’re more flexible because we have to be.

But doing so is not without a cost. And part of that cost, I think, is a pervasive feeling of uncertainty and, for many, worry and increased stress. Here’s what the Centers for Disease Control and Prevention lists as some of the symptoms of stress we may be experiencing:

- Feeling irritated or angry
- Feeling uncertain, nervous or anxious
- Feeling unmotivated
- Feeling tired, overwhelmed or burned out
- Feeling sad or depressed
- Having trouble sleeping
- Having trouble concentrating

I'd say almost everyone has experienced at least some of these symptoms during the last six months.

Stress is unavoidable, so what can we do to counter its impact?

One thing that can be reassuring in the midst of all of this is to understand clearly which workplace practices, rules and laws have changed, and which have not changed. That's part of what I set out to explore during a Practising Law Institute conference I recently chaired titled, "Psychological Issues in the Workplace 2020." The Americans with Disabilities Act (ADA), for example, was not enacted specifically to address mental and physical disabilities arising from the pandemic; that law was signed by President Bush in 1990. But what is the interplay between the protections that the ADA and analogous state and local laws afford individuals on the one hand and our new workplace normal on the other? That's part of what our first panel addressed. One panel member, an associate legal counsel of the Equal Employment Opportunity Commission, made clear that the Commission is focused on providing guidance to help employers implement

strategies to navigate the impact of COVID-19 in the workplace.

But that was not the entire focus of the first panel, because litigation of mental disability and emotional distress claims has been around since well before the pandemic and will be around well after it. Employment lawyers and mental health professionals frequently work together, or they may be on opposite sides of an employment law dispute. Our first panel also discussed overcoming each discipline's unfamiliarity with and wariness of the other.

Mediations of emotionally charged employment law disputes have also taken place well before the pandemic, but what's different now? The conference's second panel discussed that. There are, in my opinion, relatively few employment law disputes that do not involve intense emotions. Often, it's the parties who have strong feelings, but sometimes the lawyers do too. And the substantive basis of an employment claim cannot predict with certainty whether or not strong emotions will be present. I've heard some say that wage and hour laws disputes, for example, do not involve a lot of emotion, yet I've had mediations with people on both sides of these disputes who were in tears.

Our third panel addressed a topic we are all too aware of: workplace violence and the associated ethical issues and professional responsibilities. This, of course, is not a topic that is directly linked to the pandemic; however, it is still

important. On this panel, I convened not only employment lawyers, but a forensic psychiatrist, whose perspective was critical to the discussion. As I mentioned earlier, employment lawyers and mental health professionals interact often, so they should not be strangers to each other. Yet attorneys and mental health professionals sometimes speak different languages: one infused with legal concepts, evidentiary and procedural rules, and even a touch of Latin; and the other grounded on clinical observations, research and evolving theories of human behavior. For each panel, we brought attorneys and mental health professionals together, and the interplay between them resulted in a fascinating dialogue.

Stephen P. Sonnenberg, Esq., is a mediator on the JAMS New York panel. He has deep experience in understanding and resolving complex labor and employment disputes. Mr. Sonnenberg's unique background, which allows him to understand both plaintiffs' and defendants' concerns, comes from the practice of law, experience as a mediator, and prior experience as a psychotherapist. Mr. Sonnenberg is known for his attention to detail, thoughtful approach to emotion-laden disputes and demeanor conducive to settlement. He can be reached at ssonnenberg@jamsadr.com.

