

# SHOULD YOU OR SHOULDN'T YOU?

## Disclosure of Mental Illness in the Workplace

Disclosure is a delicate issue, says SADAG operations director Cassey Chambers. "There has been some positive response from people sharing their illness, even cases where the company has put up posters and flyers and had a speaker in to create more awareness. But in many cases people feel left out, isolated, teased. Each person has to decide for themselves whether to share their diagnosis."

The first thing to ask yourself, says Johannesburg clinical psychologist Dr Colinda Linde, is "**Why am I planning to disclose?** Because I need time off to see my doctor, because I want someone to talk to, or because I want support on bad days?"

The second is "**Will these needs be met by the person I am disclosing to?**" Someone in HR person may be more supporting than a colleague, but not necessarily, says Linde. Each person you tell will have their own history and agenda that will bias them one way or another.

The third question to ask yourself is "**How much or little do they actually need to know?**" You need to be comfortable in your decision, and informed of your rights.

### LEGALLY SPEAKING

There is no legal obligation to ever disclose a mental illness, says attorney and disability specialist Peter Strasheim, owner of DLM Labour & HR Management Consulting in Johannesburg. "Disclosure has risks – ignorance, unfounded fears, unfair stereotyping and prejudice. Always carefully weigh all the facts, and perhaps talk to a trusted friend or informed health professional, or consult a labour consultant or lawyer."

Disclosure can also bring real benefits, he says. "Since a mental illness has disabling effects, if you're suitably qualified many employers will welcome your application, because the Employment Equity Act (EEA) requires them to increase their number of disabled employees."

Even more usefully, the act places a duty on most companies to provide you with medically recommended "reasonable accommodations" to help you function, such a flexible work hours or a quieter office.

The act also prohibits unfair discrimination on the basis of disability, as do the Constitution, the Promotion of Equality and the Prevention of Unfair Discrimination Act, and the Labour Relations Act, says Meryl du Plessis, a lecturer in Public Law at UCT.

Yet she and Strasheim still advise caution: "It may be enough to ask support from psychologists through the company's employee assistance programme once you are employed, or to see an occupational health medical practitioner or sister," he says. "They have a duty to respect privacy and confidentiality."

When this breaks down, as with Zelda and Kate, you can turn to the law. But even vindication may not compensate for the distress experienced, especially if you already suffer depression. Zelda took legal action, and her HR manager was fired. "Someone nice took over, and I was asked to go back. But I don't want to -- the atmosphere had been poisoned. I'm just relieved that through my ordeal others there with mental problems are now being properly accommodated."

Zelda is at home on a temporary disability grant, developing community art projects much as Carrie grew a vegetable garden. "I don't want to work for other people again," she says flatly. "The stigma and stress just aren't worth it."

\* Name changed

## HOW TO DISCLOSE

### IF APPLYING FOR A JOB:

- 1 Know that it's unfair to apply for a job and not disclose if you are unable to do the job properly, says Linda Trump, head of the Johannesburg Bipolar Association.
- 2 In a job application form, health questions may not be asked; if they are, leave them blank, advises attorney Peter Strasheim.
- 3 State in your CV or covering letter that you have a disability. Do not give details of the diagnosis, effects, or even medication taken, he says. You are not required to.
- 4 At the interview, if asked about the nature of your disability, politely do not respond. Instead explain the "reasonable accommodations" you may need such as time off for medical appointments.
- 5 Give an assurance that you are managing your disorder, and focus on the abilities or experience you can bring to the job.

### IF ALREADY EMPLOYED:

- 1 Ask your health professional for advice.
- 2 Arrange a private meeting with HR and get their assurance of confidentiality.
- 3 Tell them an illness you have has become disabling, without giving the actual diagnosis. Strasheim suggests the words "a condition related to stress," "a neurological problem," "a biochemical imbalance".
- 4 Request your right to "reasonable accommodations" recommended by a qualified health professional (perhaps take yours to the meeting with you).
- 5 If you are dismissed after disclosing a mental disability and no attempt was made to reasonably accommodate it, this is unfair dismissal, says Strasheim. Remedies include reinstatement or compensation. The CCMA can award you up to 12 months compensation. The dismissal is also likely to amount to unfair discrimination, for which the Labour Court can award up to 24 months compensation.
- 6 For dismissal to be fair, it must be for "fair reasons," which fall into three categories, explains law lecturer Meryl du Plessis: misconduct, incapacity, or the operational requirements of the employer. If you don't disclose, symptoms of your condition may lead your employer to think you guilty of misconduct (through poor performance, insubordination etc). To dismiss you for incapacity, they must show they have attempted to "reasonably accommodate" your disability. If you're unable to perform the "inherent requirements" of the job even with accommodations, dismissal for incapacity may be fair.

FOR HELP: Call SADAG on 0800 567 567 or SMS 31393 (SADAG also offers awareness training courses for employers), or the Bipolar Helpline 080 070 8090