



Connecticut **Business & Industry Association**

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Before the Committee on Labor and Public Employees  
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**H.B. 5534 AA Prohibiting Discrimination on the Basis of Mental Disability in State Contracts**

To members of the Judiciary Committee, my name is Kia Murrell and I am Assistant Counsel for Labor & Employment matters at the Connecticut Business and Industry Association (CBIA) which represents more than 10,000 companies throughout the state of Connecticut. In reviewing **H.B. 5534, AA Prohibiting Discrimination Against Mentally Disabled Persons by State Contractors**, we are generally supportive of its goal in expanding the application of state anti-discrimination laws in state contracting to include persons with mental disabilities. However, we are concerned that *the broad definition of a "mental disability" under state law may discourage companies from becoming state contractors* if their decisions regarding someone's fitness for work are questioned simply because the person has a disorder that could be deemed a "mental disability." Therefore we oppose this legislation for the following reasons:

- HB 5534 should adopt the federal definition of "mental disability" because federal law considers the extent of the mental impairment rather than just the existence of a mental diagnosis.
- Under state law almost any diagnosed mental/emotional disorder can be considered a "disability" for purposes of illegal discrimination and that would have a far-reaching impact on companies' hiring practices and their ability to bid on state contracts.

***The state law definition of "mental disability" is much broader than the federal law.***

**H.B. 5534** proposes to add the category of "mental disability" to existing state law prohibiting discrimination in state contracts. Specifically, it provides that every state contractor must agree and warrant not to discriminate against a person on the grounds of mental disability "*[u]nless it is shown . . . that such disability prevents performance of the work involved.*" It is illegal under both state and federal law for employers to discriminate against people with disabilities. On the federal level, the Americans with Disabilities Act (ADA) prohibits employment discrimination against the mentally disabled if they can perform the essential functions of the job but the definition of a mental impairment is limited to exclude disorders such as certain sexual behavior disorders, compulsive gambling, kleptomania, pyromania and "psychoactive substance use disorders resulting from current illegal use of drugs." 42 U.S.C. § 12211(b); 29 C.F.R. § 1630.2(h)(2) and 3(d). Thus, a mental illness is only a disability under the ADA if it substantially limits a major life function. Whether or not a specific impairment

constitutes a disability under the ADA is fact-specific, so the fact that impairment is found to be covered by the ADA in one case does not mean that all such impairments are disabilities. ***The relevant issue under federal law is the extent of the impairment rather than just the existence of a diagnosis.***

The Connecticut Fair Employment Practices Act (CFEPA) also makes it illegal for employers to discriminate against someone with a mental or physical disability. Under the CFEPA a person has a mental disability if he/she has a record of, or is regarded as having one or more mental disorders, as defined by the "*Diagnostic and Statistical Manual of Mental Disorders*," otherwise known as the DSM-IV. The DSM-IV, is a manual published by the American Psychiatric Association which is typically considered the 'bible' for any mental health professional. The DSM-IV diagnoses mental disorders along a 5 level or "axis" system that covers everything from clinical syndromes such as depression and schizophrenia on Axis 1 to Borderline Personality Disorders on Axis 2 to psychosocial stressors following a major life event such as post-partum depression, social phobias and general anxiety on Axis 5. ***Where the ADA requires that a mental condition impair a major life function to be considered a "disability," all the CFEPA appears to require is that a person have a DSM-IV diagnosis.***

***In relying upon only the existence of a diagnosis rather than the extent of that diagnoses to determine when a mental impairment is a disability, the state law is much broader than the federal law.*** Although Connecticut courts have held that the determining when an employee has an mental disorder under the CFEPA is fact-specific, so long as a person is diagnosed with a condition contained on a DSM-IV axis it has generally been found to be enough to bring a discrimination claim. ***Consequently, under state law, almost any emotional or mental disorder would be actionable under HB 5534 unless an employer can prove that it impairs an employee's ability to do an essential job function, which may be difficult to prove in some cases.*** This will cause employers to expend time and expense in defending their personnel actions whenever someone has had any DSM-IV diagnosed disorder. We think that the potential impact of this legislation on companies that decide to bid on state contracts could be negative. Therefore, we generally oppose the legislation.