

A look at issues arising when considering dealing with mental health in the workforce... with consistency and in compliance with the law.

Well-being at Work

Managing mental ill health can be one of the more challenging aspects of an employer's business. It can also be a costly burden and one which many employers overlook to their detriment. It's an issue demanding good knowledge of the legal requirements and relevant legal principles in order to ensure an effective approach is taken.

Promoting positive mental health in the workplace

A recent Chartered Institute of Personnel and Development study highlighted the impact that mental ill health can have on organisations, finding:

- **37%** of sufferers are more likely to get into conflict with colleagues
- **57%** find it harder to juggle multiple tasks
- **80%** find it difficult to concentrate
- **62%** take longer to do tasks
- **50%** are potentially less patient with customers/clients.

Clearly, staff with good mental health are more likely to perform well, have good attendance levels and be engaged in their work. So promoting positive mental health in your workplace can be a hugely beneficial step towards increasing efficiency and preventing health issues from arising.

Policies and procedures

Businesses with written policies and procedures can monitor and manage absences for mental ill health far more effectively than those that don't. A policy on sickness absence, as well as capability or persistent short term absences means that staff are clear on what will happen should they have time off sick. This also ensures you're consistent with staff and provides a process for you to follow when issues arise. Naturally, it's important that employees

are aware of and understand the policies as soon as you implement them in the workplace.

It would also be sensible to include an obligation in the employee's contract of employment that they attend an independent medical examination at your request, to enable you to obtain a qualified medical view on their ability to work.

Managing staff experiencing mental ill health

You should be confident and proactive in supporting staff experiencing mental ill health. To effectively manage absences, keep detailed records and review them periodically if necessary. You should then be able to spot any patterns of illnesses that might suggest underlying mental health problems. This also helps you manage employees who take short but frequent periods of time off.

A return to work interview can be especially useful at identifying any mental health issues. They offer the time with the employee to properly ascertain the reason for the time off, whether it's related to work or something in their personal life.

Reasonable adjustments

It's also important to be proactive if an employee's absence/s suggest their mental health amounts to a disability. You should always seek the opinion of a doctor or medical expert at an early stage and attempt to minimise their symptoms if you can. If an employee's mental health does constitute a disability, be aware of your obligations under the Equality Act 2010. For example, having taken medical advice you should consider how you can make reasonable adjustments to an employee's duties in order to better accommodate their illness at work.

Personal Injury

There is a clear rationale for businesses to take such an approach to ensuring good mental health in the workplace too. Changing an employer's approach to work related stress not only benefits the employees, but can benefit the business, reducing absence levels and improving overall performance.

Employers also have a legal obligation to ensure the health, safety and welfare of their employees. Businesses have a duty of care over their staff, and this includes psychiatric injury suffered as a result of the employer's negligence. If an employee can show that the employer knew, or should have known, that the injury would occur they can bring a civil claim for damages against them in court. This reinforces the importance of obtaining medical evidence about the employee's mental health and minimising the risks of it getting worse.

If you are seeking any employment law advice then please contact our experienced team on employment@steeleslaw.co.uk or 01603 598000.

There's more guidance on Mental Health and Wellbeing in the Better Business Toolbox, alongside 'doing good' advice on parental leave, IT purchase schemes and promoting sustainable behaviours. naj.co.uk/better-business-