

KEY CONSIDERATIONS FOR MENTAL WELLBEING AT WORK



Linklaters

Mental health: the UK legal position

- > There is no legal definition of mental health or stress in the UK.
- > The ACAS guide, *Promoting Positive Mental Health in the Workplace (June 2019)* describes mental health as “our state of emotional, psychological and social wellbeing; it affects how we think, feel and act and how we cope with the normal pressures of everyday life”.
- > Employers have a legal duty to take reasonable care for the safety of their employees and see that reasonable care is taken to provide them with a safe place to work. This means employers should take all steps which are reasonably possible to ensure the health, safety and wellbeing of their employees.
- > Beyond the duty of care, there is also a business case for employers to ensure the wellbeing of their workforce, as this can help improve workplace culture, staff retention, increase performance and productivity and reduce absenteeism.
- > Employees may bring a number of claims against employers relating to mental health, such as: (i) discrimination, harassment and/or victimisation; (ii) unfair dismissal; (iii) breach of contract; or (iv) personal injury.

Disability discrimination

- > The Equality Act 2010 prohibits less favourable treatment because of certain protected characteristics, such as a person's disability (i.e. direct discrimination).
- > It is also unlawful for an employer to apply a provision, criterion or practice which would put a person or group of persons with a disability at a particular disadvantage, without objective justification (i.e. indirect discrimination) or discriminate unfavourably because of something arising in consequence of a disability, without objective justification.
- > “Disability” is defined as a physical or mental impairment which has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities. This can include anxiety, depression or other mental health conditions.
- > Employers are required to make reasonable adjustments where any provision, criterion or practice applied by the employer places a disabled person at a substantial disadvantage when compared with non-disabled persons.

Managing sickness absence

- > **Understanding the nature of the absence:** Different types of sickness absences (e.g. whether short term and intermittent or long-term) may warrant a different response from the employer, therefore it is important to regularly communicate with your employee to understand how best to support them. During the absence management process, employers should aim to understand the nature of the sickness absence without making assumptions.
- > **Communication:** Unless otherwise advised by a medical professional and depending on the employee's preferences, maintaining good communication during sickness absence is important. It starts with informal chats asking how they are on a regular basis.
- > **Consider reasonable adjustments:** When considering a return to work, employers should aim to be flexible in making adjustments when people need them such as a phased return to work, change in working hours or shift patterns, or reallocation of work.
- > **Wellness Action Plans:** On a return to work, managers should work with employees to develop an individual action plan which identifies the signs of their mental health problem, triggers for stress, the possible impact on their work, who to contact in a crisis, and what support they might need.

Sickness absence benefits and pay

- > **Statutory sick pay (SSP):** Qualifying employees who are absent from work due to incapacity are entitled to receive a minimum weekly SSP payment for up to 28 weeks in any period of incapacity for work (or series of linked periods), subject to tax and normal deductions.
- > **Contractual pay and benefits:** Employees may be entitled to enhanced sick pay and benefits in accordance with their contract of employment or sickness absence policy. Mind recommend paying more to employees than the legal minimum to avoid employees (particularly those on low pay) feeling disincentivised from taking the time off that they need due to low pay.



Voluntary reporting

- > The 2017 *Thriving at Work* review suggests that employers should increase transparency and accountability through internal and external reporting to include a leadership commitment and outline of the organisation's progress on mental health.
- > *Voluntary Reporting on Disability, Mental Health and Wellbeing* framework by DwP, supports employers to voluntarily report on disability, mental health and wellbeing in the workplace, aimed at employers with over 250 employees.
- > Mind suggests large employers produce a report which evidences the impact of their mental health and wellbeing initiatives through case studies and data, such as disclosing results of staff survey results, sickness absence levels and engagement in mental health activities.

Workplace culture

- > Wellbeing at work impacts an organisation's culture and employee mental health. Investors are increasingly demanding a better understanding of how organisations manage their people.
- > The stigma around mental health can prevent open discussion. Organisations need transparent whistleblowing and speak up/listen up cultures which promote psychological safety for employees to report concerns without fear of reprisal.
- > Create a culture of openness and help staff to think more about their own and colleagues' mental health and what factors can affect this.
- > The 2017 *Thriving at Work* review provides a framework of six core and four enhanced standards for all employers to implement to improve mental health at work. Mind strongly recommends all employers adopt the core standards.

Practical tips

- > **Mental health plan:** Produce, implement and share a mental health plan to detail what support is available to improve employees' wellbeing.
- > **Stress at work policy:** Review existing or implement new policies, with guidance on how employees should deal with the effects of stress and support available in the workplace.
- > **Routinely take stock:** This allows you to understand the factors that affect staff mental wellbeing in your workplace, assess your current approach, and plan for the future.
- > **Raise awareness:** In many workplaces mental health is the elephant in the room. Too often, employees are scared to talk to their manager and problems can spiral. You should aim to raise awareness of mental health by: embedding mental health in induction and training, celebrating key dates in the mental health calendar, running internal communication campaigns, and recruiting Mental Health Champions.
- > **Education and training:** Employees and managers should be trained to recognise and respond to signs of stress and to avoid behaving in a way that creates an unduly stressful situation. Provide opportunities for learning/development.
- > **Consider ways to promote good mental health:** Such as counselling, flexible working options, employee assistance programmes, occupational health involvement, discouraging presenteeism.
- > **Seek medical information:** Seek advice from occupational health and other medical professionals to manage long-term absence and assessment of disabilities and reasonable adjustments.
- > **Involve staff in dialogue and decision making:** Use methods such as staff surveys, diversity forums, and internal communication channels.
- > **Promote a healthy work/life balance:** Your organisation should encourage staff to work sensible hours, and take their annual leave.
- > **Regular one-to-ones:** Encourage managers to speak regularly with staff about how they're doing and explore what might be impacting on their mental wellbeing.

Resources

- > Stevenson / Farmer Review 2017: *Thriving at Work - Mental Health Core Standards*
- > Mind's report for employers on *How to Implement the Thriving at Work Mental Health Standards in your Workplace*
- > ACAS guide, *Promoting Positive Mental Health in the Workplace*
- > HSE Management Standards for Work Related Stress
- > Mind's *Workplace Wellbeing Index*

Contacts

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