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Employment – 20:20 vision

Providing clarity and insight on employment law matters

Mental health issues are on the rise: what should employers be doing with respect to their employees' mental health?



On 1st October 2020 the Centre for Mental Health charity published its prediction that up to 10 million people (almost 20% of the population) will need either new or additional mental health support as a direct consequence of the Covid-19 pandemic. This echoes the statistics recently released by the Office of National Statistics that, compared to this time last year, the number of British adults suffering with depression has doubled. With employees now having to work from home, if they can, and facing the prospect of localised lockdowns, the shifting landscape of COVID-19 restrictions can take a toll on their mental health and lead to, or exacerbate, conditions such as anxiety and depression.

In this e-alert, we look at ways that employers can support their employees during these uncertain times.

Practical tips for employers

- Rising unemployment in the wake of COVID-19 has been widely reported. Reading such stories can cause employees to worry about their own job security, which can take a strain on their mental health. Having timely and regular communication can help provide some certainty and reassurance for employees who may be feeling anxious. Be open with them about the steps you are taking to respond to the new restrictions and how this may impact their work as well as the business as a whole. Regular communication also provides an opportunity for staff to voice any concerns or feedback.
- During the Prime Minister's briefing on Tuesday 22nd September, he clarified that employees who need to go into work for "their mental health" or "wellbeing" should continue to do so. Employers should be taking note of this and, where possible, making provisions for those employees to work from their usual workplace if their mental health and well-being will suffer as a result of working from home. Where employees are planning to work in the office, they should be made aware of the risk assessments undertaken by the employer and the health and safety measures in place to protect them whilst at work.
- For junior team members, working from home can feel overwhelming without the supervision that comes from working in the office. Make sure to schedule regular catch up meetings with junior employees, to check in on them and ensure that they are receiving the right support.
- For employees returning to work after an extended period of furlough, the prospect of full time work may feel daunting and a source of anxiety. Conducting "return to work meetings" or refresher training can help with the transition process. Encourage employees to engage in informal virtual social events, such as virtual coffee mornings, so that they have an opportunity to socialise with their colleagues as they might do in the office.
- Make sure to advertise clearly, whether in email communications or on an intranet site, the support available to employees, such as counselling through private medical insurance or Employee Assistance Programmes. Also, make it clear who employees can talk to internally if they are struggling with their mental health. If

you do not have mental health first aiders or mental health champions, it might be a good time to consider up-skilling certain people to provide this support.

- Encourage employees to continue to take annual leave. Even if employees are subject to localised lockdowns, it is still important that they take time away from work particularly because separating work from your personal life can be much harder when working from home.
- The uncertainty surrounding COVID-19 restrictions can also exacerbate pre-existing mental health conditions. If an employee makes a new disclosure about their mental health, treat it sensitively and take appropriate action. Employers may want to consider discussing with the employee: how their condition is best managed; implementing a support plan which addresses their triggers; how their mental health might affect their work; as well as reasonable adjustments that the employer can make and a time to review. Any plan should be flexible as their mental health may change.
- Some employees may also lose friends or loved ones and such a loss can take a real toll on their mental health. Whilst there is no obligation to provide compassionate leave, giving the employee time away from work allows them to focus on their wellbeing and reassures them of your support. If you do not have a compassionate leave policy in place, you may want to consider implementing a policy so that any leave requests can be dealt with objectively.

Legal risks arising from a failure to address mental health issues

As outlined in our mental health alert at the start of lockdown, failure to properly address mental health issues can leave employers legally exposed in a number of ways.

- For example, mental health issues can constitute a disability under the Equality Act 2010 (*if they have a substantial and long-term adverse effect on an individual's ability to do normal daily activities. 'Long-term' means that the condition has lasted, or is likely to last, 12 months or more*). If an employee is deemed "disabled" under this legal definition, then the employer will have a duty to make reasonable

adjustments for the employee, and should avoid putting in place any widespread measures that directly or indirectly place someone with a disability at a disadvantage. Failure to do so could lead to disability discrimination claims.

- The difficulty with mental health issues is that they are often "invisible". It is therefore vital that any obvious signs that someone has a mental health issue are not ignored, so that steps can be taken to mitigate the risk of any discrimination at an early stage and to make reasonable adjustments as required.
- Employers have a statutory duty to ensure the health and safety of their employees (under the Health and Safety at Work Act 1974), as well as a common law duty of care to take reasonable care for the safety of their employees. These duties will extend to work-related stress. Employers should therefore be actively ensuring the health and wellbeing of their employees even when they are working remotely. Failure to do so could give rise to a number of claims, including personal injury claims and breach of contract.

Please do get in touch with Paul Reeves, Leanne Raven, Elspeth Hunt or your usual Stephenson Harwood contact if you require advice on the issues arising out of this e-alert.

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