

DAC Beachcroft Spotlight: Work Place Mental Health

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Last year, 526,000 workers in Great Britain suffered from work-related stress, depression or anxiety and for the first time, stress became Great Britain's biggest work-related illness, overtaking musculoskeletal disorders. Over 12.5 million days are lost at work due to work-related stress and the overall cost to Great Britain is estimated to be over £5bn.

Criticised in the past for not dealing with health and instead focusing on safety, the Health and Safety Executive is now taking a more proactive approach in terms of providing guidance to duty holders as to what is expected of them and how those expectations can be realised.

Following the Stevenson/Farmer review of mental health and employers, which was commissioned by the Government in 2017, the HSE has set out its Management Standards Approach to help employers and employees understand what they should expect from each other.

These six standards are; demands, control, support, relationships, role and change. The HSE summarise these standards in the following way:

- Demands - this includes issues such as workload, work patterns and the work environment
- Control - how much say the person has in the way they do their work
- Support - this includes the encouragement, sponsorship and resources provided by the organisation, line management and colleagues
- Relationships - this includes promoting positive working to avoid conflict and dealing with unacceptable behaviour
- Role - whether people understand their role within the organisation and whether the organisation ensures that they do not have conflicting roles
- Change - how organisational change (large or small) is managed and communicated in the organisation^[1]

So what should your organisation be doing? Well the HSE suggest the usual risk assessment based approach, namely, discuss the issue with stakeholders, identify the risks, identify who is at risk, evaluate those risks and consider mitigating control measures, and record your findings.

But what in practice does this mean? With a focus from Regulators such as the HSE, to Government White Papers, Charitable organisations to high profile campaigns, mental health awareness and mental health in the work place is not going away. As such we strongly recommend that whilst risk assessments may not have been traditionally undertaken for mental health at work, that these are now undertaken and we anticipate that duty holders can be expected to be asked the question from HSE Inspectors "where's your mental health risk assessment". A failure to turn your attention to this issue may then have further legal implications for you as an employer.

A mental health risk assessment may seem a big task and you worry that it may inadvertently cause offence to members of staff but what the assessment will actually show staff is that you are trying to manage their ill health effectively and sensitively.

As an employer, you are under a legal obligation to provide reasonable adjustments for any employees who meet the definition of a "disabled person" under the Equality Act 2010. Failure to do so could result in legal action and costly proceedings, as well as potentially create negative exposure in regards to how you manage employees who are suffering from an illness. Employers also have a general duty of care and responsibility for employee health and wellbeing. A mental health risk assessment will help try and reduce any allegations that you failed in your duty as an employer to help facilitate an employee's ill mental health.

As mental health conditions are the most common reason for employees to be on long term sick leave, it's vital that employer's support and manage employees properly to avoid the need for long term absence. When an employee is ill, (whether physically or mentally), employers are encouraged to seek Occupational Health advice. Occupational Health's involvement is key to providing employers with help and guidance on how to effectively manage employees who are not well. The quicker an employer can implement proposed changes to help an employee, the less likely the employee is to go off on long term sick. Common suggestions for adjustments are phased returns, flexible hours or relaxing absence rules and limits for those with a disability.

There is no one size fits all approach and this is why it's essential to seek medical advice and input. What may work for one

employee may hinder another.

Being open and approachable to employees is vital in the employee-employer relationship and can increase discussions

which may lead to people seeking help from you. Figures show that one in five people felt that they could not confide in their boss that they were stressed at work[2]. Taking steps to create a culture that supports staff to be open about their mental health and open about their level of workload will create a more supportive culture. It's essential to all those involved that organisations have clear channels in place for employees to raise concerns and do so knowing that their management team will deal with them in the most proactive way.

Taking steps to ensure that employees feel calm and confident at work will go a long way to help tackle the negative stigma regarding mental health conditions and allow your employees to thrive at work. By taking a proactive approach to reducing stressors and ensuring management are approachable and trained on how to deal with sensitive topics, you can prevent people becoming ill and reduce the level of stress related sickness absence within your workplace.

Failure to take these steps and adapt to employee's ill mental health could potentially result in a disability discrimination claim being brought by the employee. They may argue that you failed to accommodate for their disability and they were therefore disadvantaged in the workplace. Discrimination claims in the Employment Tribunal, if founded, give rise to a potential award for damages and injury to feelings. Such compensation is uncapped and it is therefore vital to avoid these claims by turning your attention to these issues at the earliest opportunity.

This year's Safety Health and Environment Team Annual Conference, taking place in London on 9 November and Leeds 21 November and is focused on health and wellbeing. Spaces are available but limited. For more information, contact csgevents@dacbeachcroft.com.

[1] Taken directly from <http://www.hse.gov.uk/stress/standards/index.htm>

[2] Taken from MIND article <https://www.mind.org.uk/media/550657/resource4.pdf>

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