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White Paper Conference - Law for HR: Hints, Tips and Solution-Focused Answers

Managing mental health related absences

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Monday 24 May 2021



The state of workplace mental health 2021*



Most common issues causing workplace stress

Volume of work **59%**
Management style **32%**
Homeworking challenges as a result of Covid-19 **31%**
Non-work factors **25%**
Covid-19 related anxiety **23%**



77%

Of respondents believe their organisation actively promotes good mental wellbeing
Up from **58%** in 2020

▲ Preventative approach to managing stress
Substantial increase in employers taking proactive steps to manage stress



42%

extremely concerned

About the impact of the pandemic on employees



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Top actions to manage employee mental health

70% employee assistance programmes
68% increasing employee awareness
63% access to counselling services
59% phased return to work/ reasonable adjustments
56% mental health first aid training

*CIPD Health and wellbeing at Work 2021: survey report

CIPD Health and wellbeing at work 2021: survey report - https://www.cipd.co.uk/Images/health-wellbeing-work-report-2021_tcm18-93541.pdf

Mental health spans wellness to illness and everyone is somewhere on that spectrum on any given day



Source: Courtesy of Delphis – The Mental Health Continuum is a Better Model for Mental Health – 30 June 2020
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Delphis - The Mental Health Continuum is a Better Model for Mental Health – 30 June 2020

<https://delphis.org.uk/mental-health/continuum-mental-health/>

Workplace mental health legal landscape



Common law

- Duty of care to provide a safe place and system of work
- Implied duty on mutual trust and confidence



Health and safety

- Health and Safety at Work Act 1974 and regulations
- Employers must take all reasonable steps to provide a safe and healthy workplace
- Carry out risk assessments
- Enforced by HSE and can include criminal liability



Working Time

- Limits on working hours
- Holiday
- Rest breaks
- Specific rules for shift workers



Anti-discrimination measures

- Disability protection includes measures to protect mental as well as physical health
- Reasonable adjustments
- Failure by employer to support partner with mental health issues was discrimination: MJ Taplin v Freeths (ET 2021)



Covid-19

- Government guidance and regulations linked into health and safety obligations

MJ Taplin v Freeths is a good example but only ET

<https://www.legalfutures.co.uk/latest-news/firm-discriminated-against-partner-suffering-mental-health-problems>

Employers are starting to treat mental wellbeing as a commercial imperative rather than a compliance issue, many having wellness strategies

People Management Survey 2 March 2021

<https://www.peoplemanagement.co.uk/news/articles/less-than-half-of-uk-employers-have-a-formal-wellbeing-strategy>

Mental ill health tricky problems



Difficult conversations

- Unless already diagnosed, line managers should be vigilant, unusual number of short-term absences, distracted, excessive drinking etc
- If someone is acting out of character, have a conversation early
- Offer support, referrals, reallocation of workload, time off
- Maintain regular catch ups

Employees who may be a danger to themselves or others

- Most HR professionals will not be equipped to deal with these situations so it is better to escalate
- OH referral or discussion with family member where speed is of the essence
- Some companies have suicide/danger protocols so that external agencies can be notified to assist

Fair dismissals

- Fair dismissals are possible
- Where there is a significant impact on the individual's role or performance
- The method of termination may be different with more concessions
- Has the individual capacity to sign settlement terms or should a lawyer/third party warrant their capacity

BITC suicide prevention toolkit <https://www.bitc.org.uk/toolkit/crisis-management-in-the-event-of-a-suicide-a-postvention-toolkit-for-employers/>

Mental health initiatives

- 01 Mental health champions, allies and first aiders
- 02 Campaigns to promote discussions about mental health
- 03 Promotion of mental health apps
- 04 Training line managers
- 05 Menopause policies
- 06 Zoom free Fridays
- 07 Pregnancy loss policies

Mental health champions, allies and first aiders

Campaigns to promote discussions about mental health

<https://bectu.org.uk/news/government-must-make-good-on-its-promise-to-workers/>

Promotion of mental health apps

Training line managers

Menopause policies

Zoom free Fridays: <https://www.theguardian.com/society/2021/apr/13/ministers-urged-to-give-uk-home-workers-a-right-to-disconnect>

<https://www.personneltoday.com/hr/give-remote-workers-right-to-disconnect-urges-union/>

<https://www.thetimes.co.uk/article/right-to-disconnect-is-vital-for-future-health-of-home-workers-mkpcvj66t>

<https://www.thetimes.co.uk/article/right-to-disconnect-is-vital-for-future-health-of-home-workers-mkpcvj66t>

<https://www.theguardian.com/technology/2021/may/08/work-can-virtual-meeting-spaces-save-us-all-from-zoom-fatigue>

Pregnancy loss policies: <https://www.bbc.co.uk/news/business-57063143>

Mental health and Covid – Acas guidance

Staff may need additional support during the pandemic

- Time off
- Reasonable adjustments
- Reminders about workplace mental health-related support

Line managers should be approachable and available

Keep regular contact

Be proactive and ask how they are feeling and if they need more support

Reach out to those who look like they are struggling to start a conversation

Listen carefully to what they say

Be clear about confidentiality

Discuss reasonable adjustments where there is a disability

Acas Guidance on Covid and mental health <https://www.acas.org.uk/coronavirus-mental-health/supporting-staff-mental-health>

Mental health horizon

Employment Bill was expected but not mentioned in Queen's speech:

- Flexible working as a day one right
- Unions calling for the right to disengage

Burnout has been classified by WHO as chronic workplace stress that has not been successfully managed

Right to disconnect is receiving attention in Europe

- European Parliament has asked the EU Commission to create a right to disconnect from work-related tasks, activities and electronic communication during non-work hours without consequences
- Establish minimum standards for remote working

Although the UK will not be subject to any new EC rules, it is likely to set standards in global businesses and likely that the practice will catch on outside the EU

Right to disengage <https://www.theguardian.com/society/2021/apr/13/ministers-urged-to-give-uk-home-workers-a-right-to-disconnect>

Ireland's code of practice: <https://www.pinsentmasons.com/out-law/news/ireland-publishes-code-of-practice-on-right-to-disconnect#:~:text=The%20code%20introduces%20three%20main,another%20person's%20right%20to%20disconnect>

Discussion on EC new right to disconnect:

<https://www.lexology.com/library/detail.aspx?g=ac5a9ed4-6289-4c85-8369-72cf6d428596>

Questions?

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