

Can you discipline a mentally ill worker?



Dealing with a troublesome employee who has mental health issues may be a delicate area for HR, but you shouldn't shy away from discipline, a legal expert says.

However, it's crucial that you first establish whether their poor performance or bad behaviour is related to their illness, as a disability accommodation may be needed.

Navigating the issue is a challenge for HR professionals, but by following a proper process, they can ensure their company is on solid footing if it does take disciplinary action, says lawyer Erin Kuzz of Sherrard Kuzz.

“We still have an obligation and a right to get an understanding of the employee's medical condition. That's where I think some HR professionals sometimes tend to be a little bit too cautious.”

HR may need to seek further information from the worker's doctor to establish whether their disability is related to their conduct.

If it's not, there's no reason to avoid following a normal disciplinary process.

“Employees with disabilities don't get free passes,” Kuzz says.

The issue is even more challenging when HR suspects a worker has a mental health issue, but doesn't know for sure, or when the employee refuses to acknowledge it.

In such instances, Kuzz recommends HR approach the worker, then follow up in writing, confirming the approach was made and offering the support of your company's EAP service - then deal with the bad behaviour as you would any other employee.

“Also recognise that at some point down the road, somebody may be in a position where they are prepared to acknowledge that they are having some mental health challenges. At that point, we need to deal with what's in front of us, and the fact that they have denied it before now, frankly, isn't all that relevant anymore.”

It's important that HR never turns a blind eye to a potential mental health-related issue, Kuzz says.

“They're awkward conversations to have, but you're not doing yourself or the organisation any favours by ignoring what's in front of you.”

Erin Kuzz will speak on mental health and the disciplinary process at the [Employment Law Masterclass](#) on September 25, 2017.