

How to discipline an employee with mental health issues

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Mental health in the workplace is an issue that employers often seem wary to approach.

With depression linked to a drop in productivity, and anxiety interfering with co-worker relationships, it's not surprising that many HR leaders are attempting to find ways to help promote mental health awareness in their companies.

But what should employers do when it comes to reprimanding an employee suffering from poor mental health?

We spoke to Erin Kuzz, founding member of Sherrard Kuzz LLP, who gave us her take on how employers should be

approaching discipline in conjunction with mental health issues. We asked her if she believed employers are guilty of tiptoeing around mental health and discipline.

“I think the tiptoeing instinct is a fair one,” explained Kuzz. “These are really complex waters, fraught with all kinds of potential complications. However, it’s not the case that even if an employee has a mental health issue that they cannot be the subject of discipline.

“The employee has an obligation to proactively advise the employer that they have an issue, the employer also has the requirement to make appropriate enquiries if they suspect there to be a mental health issue – they don’t get to act wilfully blind.

“The reality is that to avoid discipline, the employee has to establish not only that they suffer from a mental health issue, but they also have to provide medical evidence that shows there’s a connection, or a nexus, between the mental health issue and the behaviour that lead to the discipline. Just because you have one does not mean you’re not responsible for the other.”

So, what can employer legally ask for from a doctor, and from the employee themselves, in regards to their mental health claims?

“An employer can ask if the employee suffers from a mental health condition and the general nature of it. Employers cannot ask for a specific diagnosis, but they can ask more general questions.

“You can also ask how long the worker has been suffering from the condition, you can ask the doctor what the accommodations may be, what the restrictions are and if there is a connection between what the employee did wrong and the mental health issue.”

Kuzz also shared what she believes are the biggest mistakes employers make in situations such as these.

“One mistake employers make is hearing ‘mental health issue’, stepping back and being paralysed,” she told us.

“Obligations are made more challenging when dealing with a mental health issue – but it doesn’t mean employers are without remedy. They can ask for information, they’re not required to accept what the employee tells them, or indeed what a trade union tells them – you are allowed to collect medical information and sometimes they’re even allowed to have that medical information reviewed by their choice of doctor, if the other information isn’t responsive.

“Not taking advantage of the tools at their disposal is an employer’s biggest mistake.”

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