

Checklist

How to minimise legal risks when dealing with an employee with a mental illness

Follow this checklist to help you minimise your legal exposure when dealing with an employee who is incapable of performing their role due to a mental illness:

- Obtain commitment by senior management in relation to identifying and managing signs of poor mental health among workers.
- Actively seek relevant information about the impact the mental health issue has on the employee's work performance.
- When an employee first indicates their capacity to work is diminished by a psychological condition (such as workplace stress), assume the alleged stress condition is legitimate and seek to investigate possible work-related causes.
- Seek the best available medical evidence about the employee's work capacity and enter into a dialogue with the employee to develop a return-to-work plan.
- Encourage managers to facilitate a return to work for employees on stress leave.
- Undertake the above initiatives independently from (but not in contradiction of) any process of determining a workers' compensation claim.
- Focus on reasonable adjustments and measures to overcome the issue.
- Obtain the best available medical information (while respecting limitations imposed by anti-discrimination and privacy laws).
- Explore possible support measures with the employee.