

Just Blue Monday, or something more?

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Employment Law News

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Just Blue Monday, or something more?

The third Monday in January is typically labelled “Blue Monday” and is said to be the most depressing day of the year. Christmas festivities are over, the weather remains cold and dark, New Year’s resolutions have fallen by the wayside and Christmas credit card bills are in but people have not yet been paid.

In 2021, people are likely to feel the effects of Blue Monday more acutely due to the third lockdown imposed by the government in response to the Covid-19 pandemic. It is therefore more important than ever for people to ask themselves whether any “blue” feelings are a temporary symptom of the season or a sign that they could be suffering from a more serious condition.

This article considers this question in the context of the workplace, although of course this issue is relevant to all aspects of life.

What if you’re just “feeling blue”?

Short periods of “feeling blue” are completely normal and for the most part do not interfere with doing your job. You might find that making use of informal support networks, such as attending (virtual) coffees with colleagues can be all that it takes to lift your spirits. Some employers have mental health first aiders and/or support helplines that can provide valuable advice for those needing more support.

Whatever the case, you should keep your moods under review by keeping a record of how you feel from week to week. This does not need to be formal, but it can help you spot signs of a more serious or prolonged condition and will enable you to take appropriate measures to prevent it.

What if it is something more serious?

If you consider that you are already suffering from a more serious condition, it is important to seek support from a medical professional, like your GP.

Employers have a duty to provide their employees with a reasonably safe system and place of work, exercise reasonable care for their safety and health and take all necessary steps to protect employees from risks that are reasonably foreseeable, including risks of psychiatric injury or damage.

If you believe your working conditions are affecting your health, start a conversation with your employer. It is important to discuss this with your line manager, HR, or someone else in the management chain that you feel comfortable approaching.

Let them know how you are feeling and what is causing you to feel unwell. Talk through the support you need to alleviate your condition. In some cases, it may be beneficial to attend an appointment with Occupational Health, so that a more formal support program can be put in place.

Depending on the nature and extent of your condition, you may have a “disability” under the Equality Act 2010. Your condition will amount to a disability if it is a physical or mental impairment and the impairment has a substantial and long-term adverse effect on your ability to carry out normal day-to-day activities. While there are many aspects to this definition, it is important to be aware that for a condition to be long term, so as to satisfy this part of the test, it needs to have lasted, or be expected to last, for at least 12 months.

Importantly, employers are under a proactive duty to make reasonably adjustments for disabled employees to avoid the disadvantage caused by their disability in the workplace. For mental health issues, this duty arises irrespective of whether the impairment was caused by work or by an external factor.

The duty to make reasonable adjustments is the cornerstone of disability law. It arises only once the employer knows, or could reasonably be expected to know, of an employee’s disability. In practice, this means that you do need to communicate with your employer about your condition so that they are put on actual notice. This makes having a conversation with your employer incredibly important. For example, if you are unable to work because you are struggling with your mental health, you should consider making this clear

during a return to work interview and on any sick notes provided by your GP rather than, as happens frequently, recording your absence as a cold or other such illness. As well as helping you to access immediate support, it will assist your position in any subsequent legal proceedings should the support you need be unavailable or should you be subjected to detrimental treatment.

It is unlawful for your employer to treat you unfavourably because of your disability. It is also unlawful for you to be treated unfavourably because of something arising in consequence of your disability, unless such treatment can be objectively justified. For example, some people with depression find it difficult to get up in the mornings, making them late for work. If this is an effect of your depression and you are disciplined for poor time-keeping, without account being taken of your depression, this could constitute discrimination arising from your disability, i.e. the unfavourable treatment was because of something that was not the disability itself, but caused by the disability. If you find yourself in this situation, it is important to be open with your employer about why your timekeeping suffers in the mornings and discuss whether changes can be made to your working pattern to assist you.

Conclusion

The stigma around mental health in the workplace is reducing, but there is still some way to go. If you are finding work difficult due to mental health reasons, an important first step is to have a conversation with someone within the organisation that you trust so that they can help you access the support that should be available, whether that is to alleviate the effects of Blue Monday or as part of a longer term need.

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