World Mental Health Day: why it should be high on the workplace agenda

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Today – 10 October 2021 – is World Mental Health Day. The aim of the day is to raise mental health awareness. The day was launched in 2012 at the initiative of the World Health Organisation. The theme of the day this year is "mental health in an unequal world".

Mental ill health can affect anyone at any time. There has been increased focus on mental health over the past 18 months due to the Covid-19 pandemic. Sadly, the mental health of many in the country has been affected by lockdowns, fear of ill-health, being forced apart from family, home schooling, anxiety about job security, and the blurring of the lines between home and work.

At BDBF we have seen a rise in the number of senior individuals contacting us seeking advice in relation to workplace mental health issues, in particular in relation to burn out. Often the first thing those employees need (after seeking medical support and guidance) is support from their employer, such as through counselling services or modified working arrangements

What can you do if you believe your mental health is suffering?

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

If you believe your working conditions are damaging your health, start a conversation with your employer. Consider initiating a discussion about your health with your line

manager, Human Resources (‘HR’), or someone else in the management chain that you feel comfortable approaching.

Let them know how you are feeling and the cause of your stress, anxiety or ill-health. Open up a dialogue about the support you need to get better and do your job successfully. In some cases, it may be a good idea to attend an appointment with an occupational health specialist, so that a more informed support program can be put in place. This is something your employer will normally arrange for you.

What can your employer do to help?

Depending on the nature and extent of your condition, you may qualify for protection under the Equality Act 2010 (‘the Act’). To qualify for protection, you need to have a “disability” as defined in the Act. You may satisfy the legal test for disability even if you don’t consider yourself disabled or you are not disabled for other purposes (e.g. social security benefits). A condition will amount to a disability if it is a physical or mental impairment which has a substantial and long-term adverse effect on your ability to carry out normal day-to-day activities. For a condition to be long term, it needs to have lasted, or be expected to last, for at least 12 months. It may also be recurring (meaning it comes and goes). Normal day-to-day activities could include concentration, ability to sleep and socialising.

Importantly, employers are under a proactive duty to make reasonable adjustments for disabled employees in the workplace. This means this duty arises even if you don’t ask, though often it helps to ask. This duty arises irrespective of whether your ill-health was caused by work or by something outside of work.

The duty to make adjustments only once the employer knows, or could reasonably be expected to know, about an employee’s disability. It is therefore a good idea to disclose your

condition to your employer at an early stage so that you can avail yourself of certain rights and protections under the Act, including the right to adjustments. Adjustments might include time off for treatment (such as CBT), altered working hours or a reduced or altered workload. Your employer may also have other forms of support in place to help you get better or manage your condition, such as employee assistance programmes. Disclosing your condition not only helps you access immediate support, it will assist you in any subsequent legal proceedings should the support you need be unavailable or if you are subject to detrimental treatment.

Protection against discrimination

It is unlawful for your employer to treat you less favourably 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, those with depression may find it difficult to get up in the mornings, meaning they may be late for work frequently. If you are disciplined for poor timekeeping, without account being taken of your depression, this could constitute discrimination arising from your 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. There are various other forms of disability discrimination, which we do not cover in this article.

If you believe you are being discriminated against you should considering trying to resolve matters informally with your employer, failing which raise a formal grievance. Check your employer’s grievance policy for the steps you need to take to bring a grievance.

Although bringing an employment tribunal claim for disability discrimination is in most cases a last resort, it is important

to be aware that there are short time limits for bringing proceedings.

Conclusion

Whilst the pandemic has shone a spotlight on mental health issues, the stigma around it remains. The more people feel able to talk about mental health, the less stigmatised it will become. Although we encourage individuals to be proactive about talking about their health, the onus should not be on the employee to shift the dial. On World Mental Health Day, we urge employers to do more to support mental health at work. Ensure those in management positions are trained on how to support mental health at work, implement policies on mental health and start a dialogue with employees about mental health. It's good to talk.

If you would like to know more, or you need advice about mental health or disability discrimination please contact Hannah Lynn (hannahlynn@bdbf.co.uk) or your usual BDBF contact.

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