

# A legal perspective on mental health in the workplace

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In the realm of public health discourse, mental health has long occupied a secondary role, often overshadowed by physical health and burdened by societal stigmas. However, as our understanding of the intricate relationship between mental well-being and the workplace evolves, it is essential to shed light on this evolving landscape within the context of occupational health and safety (OHS) legislation.



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## OHS legislation

Recent years have witnessed a notable shift in the treatment of mental health in the professional sphere. OHS legislation has assumed a prominent position, placing a fundamental duty on employers to maintain a working environment that is physically safe and devoid of risks to employees' mental health, to the extent reasonably practicable. This represents a significant departure from the era when mental health concerns remained largely unacknowledged and concealed in the shadows.

The consequences of unaddressed mental health challenges among employees extend beyond the individual, permeating the workplace in subtle yet profound ways. Decreased morale, reduced efficiency, absenteeism, and, in severe instances, workplace accidents can all be attributed to unattended mental health issues. These problems often manifest as poor performance or a noticeable lack of enthusiasm on the part of the employee.

## A shift in legal perspective

Historically, employers addressed performance issues by following the guidelines outlined in Schedule 8 of the Code of Good Practice – Dismissal. This typically involved implementing a performance improvement programme (PIP) that communicated clear performance standards and closely mentored and monitored the employee's progress toward meeting these standards.

However, a pivotal shift occurred in the case of *Independent Municipal & Allied Trade Unions v Witzenberg Municipality (2012)* (LAC). In this case, the court unequivocally recognised mental illness as a form of incapacity due to ill health, distinguishing it from mere misconduct. This marked a turning point in employment jurisprudence, signalling a more compassionate approach to mental health issues in the workplace.

Expanding on this shift, in *L S v Commission for Conciliation, Mediation and Arbitration & others (2014)* (LC), the court emphasised that when an employee's underperformance is linked to mental illness, it reflects an inability to perform at expected levels rather than wilful misconduct. In such cases, it becomes crucial for employers to differentiate between misconduct and incapacity due to poor work performance.

This paradigm shift gained further momentum in the recent case of *Sanlam Life Insurance Limited v Mogomatsi and Others [2023]*. In this case, which involved a constructive dismissal dispute stemming from allegations of mistreatment and mental distress leading to resignation, the court established a critical criterion: the employer must have been aware of or reasonably should have foreseen the employee's mental distress before a claim can be made.

## **The burden on employees**

In essence, for an employee to successfully assert constructive dismissal in the context of mental health issues, the onus now rests squarely on the employee's shoulders. They must demonstrate that their employer either knew or reasonably should have foreseen their mental ill health. Mere awareness of the condition is insufficient, the crux of the matter lies in the employer's indifference or insensitivity to the situation, culminating in an environment where continued employment becomes intolerable.

## **Implications for employers**

This legal precedent extends beyond the courtroom, serving as a call for employers to not only acknowledge their employees' mental health but actively engage in practices that foster a compassionate and supportive work environment. Failing to do so may not only lead to legal consequences, but also perpetuate an unhealthy workplace culture. As mental health garners increased attention in societal discourse, its integration into employment practices becomes imperative for modern businesses, transcending legal obligations to embody a fundamental ethical responsibility.

## **Conclusion**

The evolution of mental health in the workplace signifies not only a legal transformation but also a cultural shift — one that recognises the value of a mentally healthy workforce and the responsibilities of employers in nurturing and sustaining it.

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