

Mental Health Awareness Week | Employees Rights in the Workplace

In support of Mental Health Awareness Week, this blog aims to raise awareness of the rights you as an employee has when it comes to your mental health.

What rights do employees have in the workplace when it comes to their mental health?

Employers owe a duty of care to employees, which means that employers must make reasonable efforts to support employees' health, safety and wellbeing at work. This extends to supporting employees dealing with mental health issues.

In carrying out their duty of care, employers must make sure the working environment is safe for employees, protect staff from discrimination and carry out risk assessments to identify any potential risks to wellbeing.

Employees have a right to feel safe in the workplace, and so if an employer identifies a risk of discrimination against an employee arising from a mental health issue, steps should be taken to protect the employee.

Can an employee insist on continuing to work from home on the grounds of their mental health?

Depending on the severity and impact they have on a person's life, a mental health issue could be deemed to be a disability under the Equality Act 2010. If this is the case, it is a 'protected characteristic'.

When an employee is dealing with a disability, employers are required to make reasonable adjustments to certain working arrangements, to ensure the employee feels safe and supported at work. A reasonable adjustment could mean continuing to work from home.

As such, the employer should grant the request if it is reasonable. It is very important that the parties keep lines of communication open and discuss any other reasonable adjustments that might help the employee.

What counts as discrimination in the workplace?

There are many different forms of discrimination. Direct discrimination, occurs when a person is treated less favourably than someone else, due to a protected characteristic (for example, not being promoted solely due to a mental health disability).

Discrimination can also be indirect. For example, an employer may have a policy of never offering home working, but this could be discriminating against an employee with a mental health issue who needs to work from home occasionally.

Harassment is also a form of discrimination. If someone creates an intimidating, hostile, degrading, humiliating or offensive workplace environment for the employee arising from their mental health issue, this could be harassment.

What can an employee do if they feel they've been discriminated against because of their mental health at work?

Employees should first raise the issue informally with their manager or HR representative. The employer may be unaware of the issue, as such addressing it directly could help the employer understand what needs to change.

If raising the issue informally does not help the discrimination issue, the employee may consider lodging a formal grievance with their employer. Employees should follow the employer's grievance policy (if there is one) and outline all of the issues.

Finally, if the formal grievance still does not stop the discrimination the employee is suffering, they may wish to make a claim to an employment tribunal. Usually, discrimination claims must be made within 3 months of the discrimination.

Are employees entitled to sick pay and time off work for mental health issues?

Both physical and mental health issues can be deemed 'sickness', so if an employee is unable to work due to a mental health issue, they may be entitled to sick pay. The employee's contract should state what is paid and for how long.

If the contract is silent as to sick pay, then the minimum the employer must pay is Statutory Sick Pay ('SSP'). SSP is currently £96.35 a week, and can be paid for up to 28 weeks. SSP must be paid from the fourth day of sickness.

If an employee requires time off for a mental health issue, the employer should start a dialogue with the employee about any adjustments that would help the employee return to work. The employer should ensure the employee feels supported.

If you are an employee or an employer and have any questions or seeking legal advice regarding this topic, please contact our specialist [Employment Lawyers](#) by emailing online.enquiries@la-law.com or calling 01202 786332.