

CIPD



Rules on dealing with mental health issues in the workplace

[Matthew Howse](#)

What employers need to know about their responsibilities

In the wake of last month's shocking crash of a Germanwings flight in France, some are questioning what, if anything, the airline or any other employer should, or could, have done to prevent employees with mental health concerns affecting the working environment. Such questions touch on important issues about what an employer can ask for in pre- and post-employment medical screenings concerning an employee's mental health and what their legal responsibilities are with regard to employees' health.

If an employer has concerns about an employee's mental health, they should prioritise their obligation to protect the health and safety of that employee and should contact a medical or occupational health adviser, and consult with the individual about any concerns.

Regulation

The Health and Safety at Work Act 1974 imposes a duty on employers to ensure (as far as is reasonably practicable) the health, safety and welfare at work of their employees. Employers are also under a common law duty to take reasonable care of employees' workplace health and safety. The Management of Health and Safety at Work Regulations 1999 require employers to assess workplace health and safety risks for their employees and for third parties. The Health and Safety Executive (HSE) expects organisations to carry out suitable risk assessments, which should include assessing the stress levels of its employees.

Employers should train managers, monitor employee workloads, use staff surveys and risk assessments, and ensure that workplace appraisals cover employee health and safety appropriately. Where there is a risk to an employee, employers should offer free assessments from an occupational health provider, and monitor the employee's health at regular intervals. From this autumn employers will be able to refer employees off sick for four weeks or more to an occupational health therapist under the government's [Fit for Work](#) scheme in order to facilitate their return to work.

There is also a duty on employers not to harass or bully its employees under the Protection from Harassment Act 1997.

Employers can be held liable for the harassment of an employee by another employee in the course of employment, or if an employee has experienced anxiety or distress as a result of oppressive or unacceptable behaviour amounting to harassment.

Under the Equality Act 2010, an employee's poor mental health can be a disability (determined by legal tests and medical evidence), obliging the employer to make reasonable adjustments. This may include moving employees to an alternative position, management training, workload monitoring, implementing stress and anti-bullying policies, counselling, risk assessments, and ensuring appraisals cover potential mental health issues.

Claims

There are a wide range of claims that may be available to an employee suffering from mental health issues, which may include personal injury, protection from harassment, disability discrimination or harassment, unfair dismissal or constructive unfair dismissal claims. Employees may have a personal injury claim if they can prove an employer breached its duty of care, causing injury to the employee which was reasonably foreseeable.

Employers are prohibited from asking prospective employees about their mental health prior to offering them a job, but they can ask for this information after making the job offer and prior to the employee starting work in order to make any adjustments necessary. It is unlawful for an employer to treat disabled people less favourably for a reason relating to their disability, or to implement practices which indirectly discriminate against a disabled employee, unless this practice can be objectively justified. Employers will also have to process data in relation to an employee's mental health, and this will be sensitive personal data under the Data Protection Act 1998.

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