

“Are You Okay?” Addressing Employee Mental Health During Challenging Times



It's a stressful time: layoffs, terminations, mandated vacation time, unpaid leave, working from home alongside children and family members, or with no one at all – and all this amid the constant feed of new information and news.

For employers, properly adjusting to today's difficult reality includes regularly checking in on the mental health of employees. Indeed, encouraging employees to prioritize their mental health at this stressful time can in turn work to protect health and safety, promote employee retention, maintain operational capacity, and foster a safe and inclusive work culture.

Why does mental health matter, particularly at this time?

The COVID-19 public health crisis has forced many employers to close down their physical workplaces and require employees to pivot to remote work. As a result, many employees find themselves socially isolated or confined to close quarters as they share home offices with other working spouses – all without the usual escape of the workday. Added to this are the struggles of balancing the demands of child and elder care with work. These are among the current realities that contribute to a heightened risk for mental health challenges among employees.

Indeed, various news agencies have reported on the pandemic's impacts and resulting remote working arrangements on individuals.

For example, the New York Post recently cited a study finding that 35% of participants indicated working from home has negatively affected their mental health. Participants blamed difficulty in separating work and personal life, lack of exercise, and difficulty communicating with coworkers as negatively affecting their mental health.

Further, Forbes identified isolation and burnout as the two main consequences of working from home that affect employees' mental health.

The challenge to maintain relationships with coworkers and the blurring of lines between work and personal life can clearly negatively affect mental health while

working from home. One impact of this new reality was recently highlighted in the Ottawa Citizen, which cited a recent study finding that a troubling number of Canadians have reported consuming more alcohol since being confined to their homes due to the pandemic. Causes for this increase are reportedly a lack of regular schedule, boredom, stress and loneliness. Evidently, substance use and abuse have a long history of negative impacts on mental health, impacts that are blind to the professional/personal life divide.

What do employers need to know, legally?

Employers across Canada have a general obligation under health and safety legislation to protect their employees' health and safety. As stated by the Canadian Centre for Occupational Health and Safety, this broad employer duty encompasses not only protecting physical health, but also the mental health of their employees. Likewise, many jurisdictions, such as Ontario, have amended their workers compensation legislation to expressly include redress should a worker suffer an injury at work as a result of mental health issues that arise in the workplace or in the course of employment

Additionally, it is important to note that under human rights legislation employers may be required to accommodate employees who are suffering from a mental illness working remotely or on a job site. This includes mental illnesses that stem from or are aggravated by the current pandemic. Indeed, the courts in Canada have been clear that the term "disability" may take many forms, including mood disorders such as depression and bipolar disorder; schizophrenia; anxiety disorders such as obsessive-compulsive disorder and post-traumatic stress disorder; eating disorders; and addictions.¹

Moreover, an employer's duty to accommodate an employee's mental illness is not only triggered when such a condition is expressly reported; more may be required in certain circumstances. Those circumstances arise when there are reasonable grounds to believe an employee is suffering from a mental illness, including addiction. In such a case, the employer should ask if the employee has any condition it should be aware of, and/or encourage the employee to seek medical attention.

"Reasonable grounds" triggering this duty can include absenteeism, tardiness, mood swings, a sudden drop in performance, or a stark behavioural departure from the norm. This "duty to inquire" has been developed by human rights decision-makers across Canada to address the historic unwillingness of employees to disclose mental health conditions, due to feelings of shame, embarrassment, and fear of social exclusion and adverse consequences at work.

If an employer believes it has reasonable grounds to believe an employee is suffering from a mental illness, it must ensure a thoughtful and meaningful inquiry is made before any disciplinary measures are considered. In practice, this conversation can simply begin by asking the employee, "Are you okay?"

Today, with many employees working remotely or with modified work conditions, monitoring the signs that could trigger a reasonable ground to believe an employee may be suffering from a mental illness may not be easy. For this reason, the importance of regularly checking in with employees is paramount. This can take the form of virtual one-on-one check-up meetings. Another possibility is having virtual team meetings where employees voluntarily share an

anecdote or two about how they're experiencing their different working realities. The goal is to let people know they are not alone and they have external supports and outlets to rely on within their work community. More tips are listed below.

Take-aways: What best practices can employers implement to address mental health?

Focussing on mental health is arguably more important now than it has ever been in recent years. In light of the current pandemic, it is in an employer's best interest, financially and operationally, to be proactive in implementing initiatives that promote positive mental health among employees. In doing so, there are number of actions employers can take.

For instance, the Canadian Centre for Occupational Health and Safety recommends employers implement a Comprehensive Workplace Health and Safety Program to promote mental health and wellness. Measures taken by employers in this regard can include:

- Encouraging employees to maintain a structured routine;
- Avoiding pressuring employees to overwork themselves, and avoiding sending emails and work requests outside regular work hours;
- Implementing measures to encourage continued social connection amongst employees. This can take the form of having virtual meetings and encouraging employees to share their different and new experiences in an appropriate forum, such as an internal blog page or employee newsletter managed by a designated person in human resources or management;
- Circulating mental health resources and encouraging employees to seek professional assistance as needed;
- Encouraging employees to make time for self-care, including sufficient sleep, healthy eating, and regular exercise;
- Expressly remind employees of any resources offered by the employer by contract or policy, such as an employee helpline and disability entitlements from a benefit provider; and
- Adopting and/or reviewing internal policies and programs aimed at communicating a comprehensive mental health strategy for the benefit of employees.

Footnotes

1 See for instance: *Dupuis c Canada (Procureur général)*, 2010 FC 511 at para 25.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

by William Hlibchuk, Norton Rose Fulbright Canada LLP