# Fallout from unwanted office birthday party cost U.S. employer $450,000, but lessons are universal

**Disciplining or terminating an employee after they disclose a mental health issue is ill-advised**

Workplace stress is a fact in every employee's life. Put several strangers in a room for prolonged periods of time and you are bound to run into clashes of personality, opinion and temperament. For some, even claustrophobia.

These tensions can create emotional stress, politicize the workplace and divert attention from work. Aside from operational issues, workplace stressors can also give rise to serious liability on the employer's part if not dealt with swiftly and appropriately. This is particularly so when tied to workers' human rights.

A recent case out of Kentucky that has been making headlines tells a cautionary tale: An employee with a previously undisclosed mental health condition was awarded close to half a million dollars in damages. The reason? An unwanted office birthday party.

Kevin Berling suffered from an anxiety disorder and asked his employer not to throw him a birthday party for fear that it would trigger a panic attack. When his boss failed to pass the message along, Berling's fears were realized: the birthday party occurred. Berling promptly left the building and suffered a panic attack.

When he addressed the situation with his superiors, Berling was criticized, accused of "stealing his co-workers' joy." He had yet another panic attack and was escorted off the premises, his employment terminated soon after on the grounds that he posed a threat to his co-workers' safety.

Despite his short ten-month tenure, a jury awarded Berling US$450,000 – more than half of which was classified as damages for emotional distress. The balance was lost wages.

The company, Gravity Diagnostics, will of course be appealing the decision.

Whether a similarly significant award would be made in Canada is questionable. Juries tend to award far higher levels of compensatory damages than judges do, and jury trials rarely occur in the Canadian employment law context.

Damages aside, the risk of liability remains.

It should be obvious that disciplining or terminating an employee after they disclose a mental health issue is ill-advised unless there are genuinely defensible reasons for doing so. Such cases will be rare.

To stay onside their obligations, employers must exercise due diligence. They must take active steps to make themselves aware of stressful workplace stimuli, address those stressors quickly and accommodate employees where necessary. If not handled with appropriate sensitivity and tact, the employer will not just be paying human rights damages – they can be on the hook for substantial wrongful dismissal, bad faith and punitive damages as well.

Employees, too, must always take steps to notify their employer of significant workplace stressors and their impact. If your boss is unaware of or incapable of knowing the effect of workplace stressors on your health, you will have a difficult time arguing that you should have been accommodated. Had Berling not expressly advised his employer of his concerns prior to the party, that case would have gone very differently. It is likely that Berling retained a lawyer on contingency and no lawyer would have taken his case on that basis without that initial disclosure and warning.

A complicating factor is of course the difficulty employers face in distinguishing between stress arising from genuine mental illness and the ordinary anxieties that come hand in hand with modern workplaces (not to mention the fact that physicians frequently hand out doctor's notes like candy at a party).

Accommodation requests must be taken seriously but need not be taken at face value. Employers can question the basis upon which a request for accommodation is made and request medical documentation. They can and should often even have an independent medical examination conducted if they are dubious of the advice they are receiving. But they must not make assumptions about the employee's condition or demand a formal diagnosis.

Regardless of how far-fetched the accommodation request may seem, employers must remember that it is the impact of the workplace stress on the employee – not the presence of identifiable symptoms or a formal diagnosis – that really matters.

Generally, like in Bering, the complaint has to be on human rights legislation grounds. But one of those grounds is disability and if a disability arises from workplace conditions, it must be accommodated.

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