

Is There a Legal Duty to Protect Employees' Mental Health? – Ask the Expert



Failure to furnish a psychologically safe workplace can lead to liability under many laws.

QUESTION

I want to implement a mental wellness policy at our company but need to convince the CFO to lay out the money. It would help if I could make the case that the company has a legal duty to ensure employees' mental health. But do they? And under which law?

ANSWER

Companies absolutely do have not only a moral but legal obligation to provide a mentally healthy, aka, psychologically safe workplace. That duty comes from at least 5 different sets of laws imposing potential liability on employers for harassment and toxic work environments:

1. OHS Laws

All jurisdictions now require employers to implement policies and programs to prevent not only workplace violence but also harassment. While definitions vary, harassment typically includes behaviours designed or likely to induce fear, stress, anxiety, humiliation and other emotions and feelings linked to mental distress and disorder.

2. Workers Comp

While normal work-related stress isn't covered, mental stress may be deemed a workplace injury covered by workers comp when it's the product of workplace violence, harassment and other undue behaviours.

3. Constructive Dismissal

Failure to protect employees from workplace harassment and stress can result in wrongful dismissal lawsuits, including constructive dismissal if employees take the initiative and leave the company. And that can result in not only termination notice but also punitive and other aggravated damages.

4. Human Rights

Failing to protect employees from harassment is a form of discrimination to the extent victims are targeted because of their race, religion, age, sex, sexual orientation and other characteristics or circumstances protected by human rights laws.

5. Tort Laws

Failure to ensure a psychologically safe work environment can also expose employers to tort liability, that is, lawsuits for money damages by victims based on theories encompassing everything from negligence and infliction of mental distress to the new tort of online harassment.