

Duty of care and your legal responsibility

During COVID-19, many employers needed to exercise an increased duty of care by, for example, adapting to physically distanced workspaces, updating cleaning protocols and imposing business travel restrictions. But what focus have you put on your employees' mental health? Virtual pub quizzes, ice-cream deliveries and virtual team building exercises are all measures we've seen happening across social media in recent months. But have you had the, sometimes difficult, conversations about employee mental health?

Some employees have had significant stressors on their mental health in recent months. Juggling work with their caring commitments and extended periods of isolation has understandably had an impact on individual mental health and overall team morale and performance.

In your role as an employer, you have a duty of care towards the psychological wellbeing of your employees. Legally an employer has to have acted in a reasonable and prudent way, taking positive steps to have regard for the safety and well-being of their employees in the light of what they knew or should have known.

During COVID-19, many employers carefully monitored their team's mental health to make sure they felt well-supported, especially when working from home. And although many have done this from a place of leadership and care, if you haven't focussed on employee mental health, there is a legal duty of care that must be met.

Any employer who turns a blind eye to an employee struggling with anxiety, depression, stress or any other mental health challenge, may find themselves facing claims of breach of contract, personal injury, negligence, constructive dismissal or even disability discrimination. It can be disruptive for everyone involved if an employee needs to take sick leave and, unless their eventual return to work is well managed, can result in a breakdown in the employment relationship altogether.

Employers need to encourage employees to talk about any challenges they may be facing and be proactive in starting conversations about mental health. Whether this is by having one-to-ones, group sessions where employees share their experiences or directing employees to outside services such as the Listening Lounge. If you have a HR team who have been taking the strain of employee engagement in recent months, remember to check in on how they are too. It's important to remember that everyone has experienced the pandemic in different ways, the impact on one person is not the same for another. Take time to understand the individual circumstances of your team members and ask them what they need.

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