

THE BYWORD

MENTAL HEALTH AT WORK

An international perspective on promoting employees' mental health

06

Mental health as a trending topic

08

Square peg round hole?

14

The case for mental health

MENTAL HEALTH AT WORK
RISKY BUSINESS

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INTRODUCTION

Never has it been more important for businesses to focus on the health of their employees, both physical and mental. We began the research for this report before the global pandemic hit, and even then it was clear that good mental health practices at work were in the interests, not only of employees, but also of businesses as a whole. To name but one example: productivity is intimately linked to good mental health¹.

But COVID-19 has strongly magnified the issues. Healthcare professionals are now warning about the potential after-effects of lockdown and working in isolation; there is markedly increased precarity of employment

across the board; some may even be worrying about how to get back to work after having had a traumatising dose of the illness and others may be bereaved. There are still many unknowns about the situations we find ourselves in, some of which may have longer term implications for mental health: how social distancing might affect mental health in the workplace if it carries on long term, being just one example.

If there is an upside, it is that the new reality may result in increased awareness of mental health as an important policy issue for employers and engender a new focus on fostering mental wellbeing at work.

In this report covering 37 countries, we take a global look at the law on mental health. We advocate good governance of mental health in the workplace as an important aspect of building business resilience for the future and consider it to be a crucial element in the fight to regain control in the wake of COVID-19.

COUNTRIES INVOLVED IN OUR RESEARCH:

Argentina, Austria, Belgium, Brazil, Chile, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Hong Kong, Ireland, Israel, Italy, Kazakhstan, Latvia, Luxembourg, Mexico,

Netherlands, New Zealand, Peru, Poland, Romania, Serbia, Slovakia, Sweden, Turkey, the UAE, Ukraine, the UK and the US.

¹The WHO reports that “Depression and anxiety have a significant economic impact; the estimated cost to the global economy is US\$ 1 trillion per year in lost productivity”, https://www.who.int/mental_health/in_the_workplace/en/.

EXECUTIVE SUMMARY

Here's what our lawyers have told us:

» 51% of our firms reported an increased focus on mental health in their countries in recent years and that they are adopting a variety of different strategies. We think this figure will likely rise in response to COVID-19.

» We also expect the number of proposals for new law to protect mental health around the world to increase. Five places have new laws on this subject and a range of countries have proposals at various stages in the pipeline. We aim to keep a watching brief on progress and report on new laws as they are enacted.

» We identified that the main sources of law across the countries we surveyed are health & safety and anti-discrimination law, but that pinning mental health conditions to these can be challenging. Although stress and burnout are significant mental health conditions, they often don't qualify as occupational injuries under health & safety law, as these laws are more geared to one-off physical injuries caused by accidents, for example, and may not work so well for mental health conditions that develop over time. Mental ill-health also does not normally rank as a 'protected characteristic' in its own right under anti-discrimination law, but there is developing case law in certain countries (particularly,



western democracies) to the effect that it can be classed as a disability – and disability is normally a protected characteristic. This can be key to a range of protection for the employee, for example, protection against dismissal and the right to reasonable adjustments.

» It's worth being aware of the possible sanctions that operate in different parts of the world where a mental health condition is found to be the employer's responsibility. Criminal sanctions against both companies and individuals do exist in many countries. Specifically, we look at what happens where a suicide is found to be the result of failings by the employer. We advise that if this happens, the employer should do their own internal investigation and try to

put measures in place to reduce the risk of another incident.

» There seems to be a growing awareness of mental health amongst employers and, in some countries, a growing number of court cases, sometimes resulting in increasing numbers finding for the employee. This is particularly the case in the major western democracies and in South America. However, there are also significant hurdles in some countries, where the high burden of proof is a barrier to recognition of mental health conditions.

We advocate good governance in relation to mental health and to help employers with this, we finish by offering 11 tips and pointers.

MENTAL HEALTH AS A TRENDING TOPIC

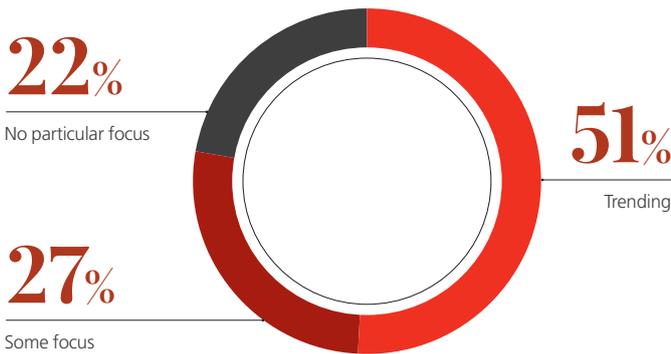
The next good management frontier

Of 37 firms surveyed, 51% reported increased awareness of mental health issues in their countries over recent years. Although not all countries have this kind of focus, the ones that do cite some inventive ways in which employers are taking up the challenge, including more benefits for employees, such as gym membership, wellbeing apps, training sessions and health checks with occupational health services. They said mental health first aiders, helplines and therapy

sessions are also becoming more readily available to employees. Some larger companies have appointed a Chief Happiness Officer or Wellbeing Director and there is a general trend towards more openness and flexibility, along with greater attention to work-life balance. The 51% also reported there was more guidance for employers and a focus on the impact of mental health on productivity. Not all of these factors applied to every country, but some of these interventions were commonplace.



MENTAL HEALTH AS A TRENDING TOPIC



EMPLOYERS' RESPONSE TO MENTAL HEALTH ISSUES



WHAT KIND OF CONDITIONS ARE WE TALKING ABOUT?

Both pre-existing and resulting from work

When we talk about mental health conditions in relation to work, we mean both conditions that can arise from work and pre-existing conditions that need to be managed in the workplace. The law of each country varies in terms of the kinds of conditions recognized as potentially arising from work, but, for example, stress and burnout from overwork may be candidates, along with anxiety, depression and post-traumatic stress disorder (PTSD). If an employer is aware (or should be aware) of a pre-

existing condition such as autistic spectrum disorder, bi-polar disorder or schizophrenia, there will normally be a duty on the employer to make reasonable accommodations for that person.

In this report, we concentrate on how the law deals with claims for conditions allegedly caused by the working environment, including what could happen if suicide results. But we finish with a list of general ways in which a healthy workplace suited to the needs of all those working within it can be fostered and maintained.



SQUARE PEG IN A ROUND HOLE?

How mental health issues are protected by law

In general terms, employees who are successful in claiming for mental health conditions in the courts are 1) able to pin their condition to an existing law or legal provision and 2) prove that their condition was caused or aggravated by (not just correlated to) their working conditions.

We will consider both of these factors, but first we will look at what sort of law exists around the world to protect employees' mental health.

Our survey results suggest that health & safety law is one of the main sources of legal protection of workers' mental health. Employers pretty much everywhere have a duty to provide a safe working environment under health & safety law and this is often interpreted to include mental well-being, even if the law doesn't talk about 'mental health' expressly. The starting point is physical well-being, with employers having a duty of care towards employees to provide working conditions that protect their life and health. The physical environment needs to be safe, leading to detailed rules in many countries about the sort of workstations, ventilation, fire prevention measures etc., that are required to minimise health hazards. At the higher end, factories working with chemicals and heavy machinery are subject to environmental law – again dealing primarily with physical working conditions.

But there is a point at which physical health issues begin to

spill over into the mental health arena, beyond the more obvious requirement to protect life and limb. PTSD following a workplace accident, is one example. Or, mental stress related to the physical conditions at work.

From there, anti-discrimination law usually protects against bullying and harassment. For example, an overly authoritarian or bullying approach either by the management or by poorly-managed co-workers, could be central to a whole range of mental health issues. Bullying can include many different behaviours, such as 'moral' harassment, inequality of treatment, insults, threats and overwork, 'freezing out' (trying to get individuals to leave by excluding them) – and, not least, physical violence and sexual harassment.

If the harassment arises from certain personal characteristics, such as a person's race, this is protected by law in many countries by anti-discrimination law. Protected characteristics vary across the world, some countries having large numbers of them, but they often include things like gender, sexual identity, civil or family status, racial and ethnic origin, religion and belief, age



and disability. They don't usually list mental health conditions as such, but in some countries, certain mental health conditions can qualify as a disability, and 'disability' is almost invariably a protected characteristic. However, it's worth noting that anti-discrimination law is not well-developed in all parts of the world and in some, there is virtually no such protection.

Sometimes, where mental health at work is not a focus in a particular country, anti-discrimination law can be the



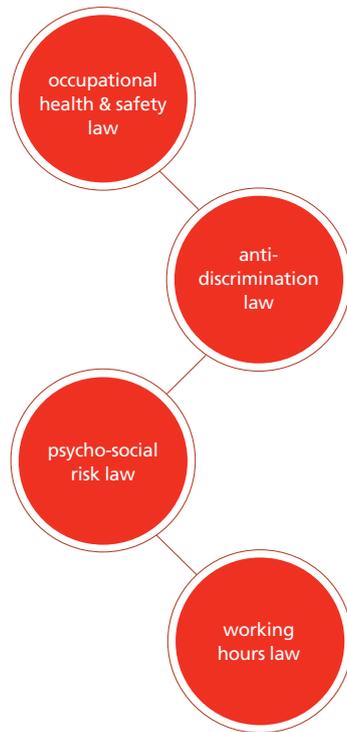
There is a point at which physical health issues begin to spill over into the mental health arena, beyond the more obvious requirement to protect life and limb

starting point for change. Associate, Marian Fertleman, in our Israeli firm reports that “the law in Israel is not highly developed in terms of mental health, but change may be coming in relation to harassment and disability, as the courts have recently awarded damages for emotional distress as a result of harassment and abuse at work.”

Some countries, particularly highly developed ones, also have very specific laws relating to what are sometimes termed ‘psycho-social risks’, and these provide detailed obligations on employers with, normally, a set of quite serious sanctions attached. In addition, as a culture of overwork can lead to accumulated mental health effects, another relevant source of law is working hours law. We discuss this in detail in our ByWord on Working Time.

And finally, the protection of employees’ mental health is not just about recognition in the courts, but about day-to-day rights

MAIN AREAS OF LAW IMPLICATED IN MENTAL HEALTH



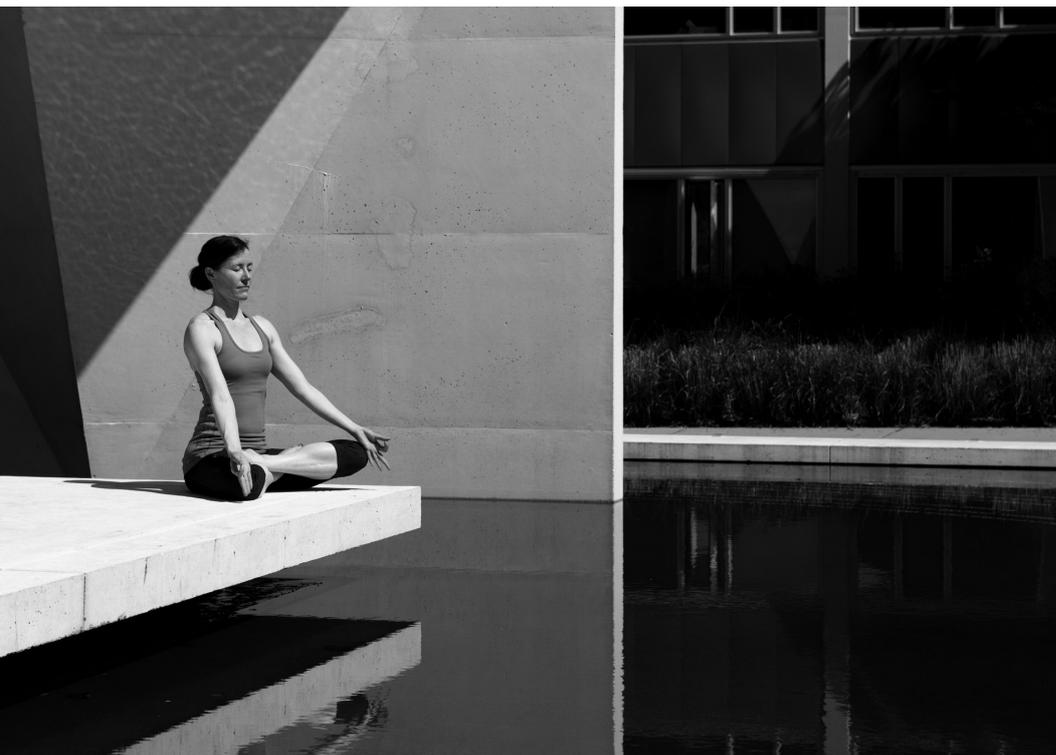
and entitlements. The degree to which these are offered - and also the degree to which employees feel they can be open enough to exercise them – varies considerably across the world. In Turkey, for example, partner, Batuhan Sahmay, reports that “Although people are becoming more open about mental health issues, they have few rights in this regard. For instance, they are not entitled to take paid or unpaid leave for stress or depression.”

WHAT SORT OF CONDITIONS ARE PROTECTED?

Whatever the rights and wrongs of it, some of the most common mental health conditions can be hard to fit into the legal frameworks that have developed around the world, particularly health & safety law. There are two main problems: 1) it can be hard to isolate the exact cause of a condition and the extent to which work was responsible, as factors in a person’s private life might also play a part; and 2) the law is often better at dealing with issues arising from sudden one-off events, such as work accidents, than the slower development of some mental health conditions. This particularly means that conditions such as stress and burnout tend not be covered in many of the countries we surveyed.

However, if stress leads directly to a physical injury such as a heart attack, that may be a different matter. A court in Greece recently ruled in a case where this happened, that it was an occupational injury under health & safety law.

Similarly, certain particularly striking or dramatic events might qualify: PTSD caused by armed robbery or physical assault at work; a sudden nervous breakdown following the announcement of a demotion during an annual assessment interview; emotional shock at aggression in the workplace causing psychological disorders – these types of events



have been considered by courts as occupational injuries.

Compare that to a case in the Czech Republic, where our partner, Natasa Randlova, tells us an employer allegedly repeatedly “attacked the employee’s psyche” and suggested taking away some of the employee’s benefits. The employee suffered a breakdown, experiencing panic attacks, heart problems and whole-body tremors, making him incapable of working. The Supreme Court found this not to be an occupational injury under health & safety law.

By quite marked contrast, in the South American countries, there seems to be less emphasis on one trigger event and greater likelihood that conditions like stress and burnout can be considered as occupational injuries. We found this was the case in Peru and Argentina and Mexico, for example.

MENTAL HEALTH ISSUES AS A DISABILITY

As mentioned, in some countries, a mental health condition could fall within the ambit of a disability – which is generally a characteristic protected by anti-discrimination law. This can be key to a range of employee protection, for example, protection against dismissal and the right to reasonable adjustments at the workplace. This operates to adjust the way in which an employee is treated at work, rather



than simply as a post-employment claim for compensation. In Austria, for example, partner, Birgit Vogt-Majarek says: “a person can be declared disabled to a certain percentage and those with a degree of disability of at least 50% are particularly well protected against termination.” Analogous rules exist in Greece, Slovakia and Germany.

However, the tests applied to decide whether a physical or mental health condition is a disability around the world are stringent. Under EU law, disability in terms of work is defined as: “a limitation which results, in particular, from long-term physical, mental or psychological impairments which, in interaction with various barriers, may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers.”²

Mental health conditions that fit the definition could, in principle, be considered a disability, but in practice, the extent to which countries do this varies. In Denmark, for instance, partner Yvonne Frederiksen says that “it is difficult in practice for employees to prove that there is a long term medical prognosis for mental ill-health. Also, although conditions

such as PTSD and ADHD, for instance, may constitute a disability, this will always depend on the facts of the case.”

Examples of countries that have recognised mental health conditions as a disability are Sweden, Finland and Belgium, for example. In a case in Belgium, the equal opportunities agency Unia negotiated more time for a postal round for a postman with autistic spectrum disorder. In Ireland, the list of mental health difficulties considered as disabilities includes depression, work related stress, anxiety, alcoholism, claustrophobia, agoraphobia, schizophrenia and anorexia. In the Netherlands the list includes attention deficit hyperactivity disorder, chronic psychological disorders, dyslexia, depression, PTSD, narcolepsy, addiction, agoraphobia, bipolar disorder and autism.

IN THE US, THE DEFINITION OF DISABILITY HAS SOME SIMILAR ELEMENTS. AN EMPLOYEE IS CONSIDERED DISABLED IF S/HE:

» has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning);

“
The law is often better at dealing with issues arising from sudden one-off events, such as work accidents, than the slower development of some mental health conditions

» has a history of a disability (such as cancer in remission); or

» is believed to have a physical or mental impairment that is not transitory (six months or less) or minor.

Several serious mental health conditions may qualify, including major depression, anxiety disorders, PTSD, bipolar disorder and schizophrenia. The law prohibits employers from taking ‘adverse employment actions’ against employees based on disabilities, including termination, demotion and reductions in pay. In addition, employers must provide reasonable accommodation to employees, unless doing so would cause undue hardship.

In many places, employers are liable for disability discrimination only if they knew or ought to have known that the individual was disabled. But as mental illness is often hidden and employees have no obligation to disclose it, this can be problematic. Our lawyers

in the UK advise that it is wise for employers to do all they reasonably can to find out if a worker has a disability, as what they knew or should have known could be disputed in court.

In South America generally, both physical and mental health are fairly readily recognized. In Brazil and Peru, they have the same level of protection and in Mexico, mental health is a protected characteristic for anti-discrimination purposes. In Argentina, a mental illness can be classified as a disability if it prevents the employee from performing their regular duties. In Hong Kong, all employees with a disability are protected by anti-discrimination law, including any condition affecting a person’s thought processes, perception of reality, emotions or judgment, or that results in disturbed behaviour. Similarly, in New Zealand, the disability definition is wide-ranging and many mental health conditions are covered.

It should be remembered however, that even where mental



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illness is treated as a disability, if someone loses the ability to do their job effectively, this can normally still be a valid reason for termination, subject to the rules on termination in the country concerned. In places with less protection, in practice, employees may take time off work (either declaring the reason to be mental health-related or not), leading to sick pay and, again, possible eventual termination if the issue is not resolved.

² See European Court of Justice preliminary ruling in C:2016:917, the Spanish case of *Daouidi*, which laid down the definition of disability under EU law: <http://curia.europa.eu/juris/document/document>.



YVONNE FREDERIKSEN
Chair of the Anti-Discrimination
Expert Group
Ius Laboris Denmark



It is difficult in practice for employees to prove that there is a long term medical prognosis for mental ill-health



SANCTIONS

If it all goes wrong...

It's worth being aware of the possible sanctions that could apply in different parts of the world if a mental health condition is found to be protected by law. The standard pattern in most places is that employers may be on the hook for damages arising from claims for discrimination and harassment, the likely amounts of which vary by country. Damages might also be payable for harm suffered in terms of pain and suffering, for example. Claims for constructive dismissal, could also be made in certain circumstances, usually involving a certain number of months' pay. Administrative fines are the norm for breaches of working hours law and minor breaches of health and safety law. Criminal liability kicks in for either extreme cases of abuse or for serious breaches of health and safety law, usually resulting in death or personal injury. At that point, both large fines and prison sentences for individual executives are within range. Having said that, criminal prosecution for causing mental illness is generally unusual.

In terms of personal liability specifically, in some countries, particularly in Europe, individual executives have been found liable towards claimants who have suffered mental health issues at work. In December 2019, the Paris criminal court found several former company executives guilty of institutional moral harassment and several other executives guilty of complicity. The court explained this was based on their strategy to "accelerate the desired reduction of the company's workforce." But

it is not all one way: in Sweden in a 2015 case, managers were found to have been negligent in failing to prevent harassment leading to suicide, but the level of it was not serious enough to constitute a crime.

In Finland, a CEO was found guilty of a work safety offence and work discrimination. The CEO was also guilty of assault, causing the claimant to go on sick leave for anxiety, panic disorder and sleep disorder. The CEO was ordered to pay 60 day-fines. In addition, the CEO and the employer company were ordered to compensate the employee with EUR 3,000 for mental injury and EUR 1,000 for suffering.

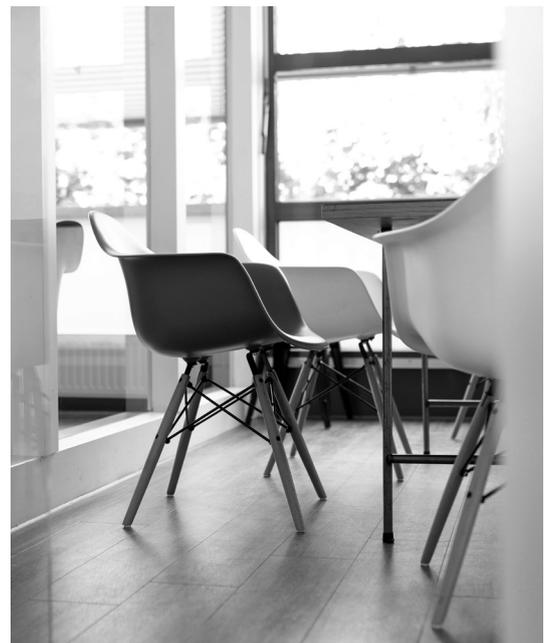
SUICIDE

No employer would wish to be in a situation in which one of its employees commits suicide but these things occasionally happen and so it is worth having a look at what the legal consequences of a tragic situation like this might be. At the same time, it is worth keeping a sense of proportion, as a causal link between the employer's actions and a death is very difficult to establish, and so it is by no means automatic that any liability will arise.

If liability does arise, in the most serious cases, it may be criminal liability. In addition, if the suicide follows from harassment, for example, this may give rise to a posthumous claim against the employer. Alternatively, there may be grounds for a claim in tort or negligence, in which case,

damages could be payable to the estate of the employee or the family. There may also be an entitlement to severance pay. For example, in Mexico a person's heirs are entitled to a one-off payment of approximately USD 27,000.

Note however, that there are outliers in terms of the pattern just described: in the UAE, partner Samir Kantaria explains that "not only is suicide itself a crime, but so is being an accomplice to suicide. Therefore, the family would have no ability to claim against the employer, unless it could somehow be proved that it was committed as a result of harassment and qualified as an occupational illness. But this is a high hurdle."





“

Traditionally, what happens outside the workplace is the employee’s own responsibility, but if an employee takes his or her own life for reasons clearly linked to conditions at work, in some countries, the lines begin to blur

In some countries, the courts have been asked to rule on whether suicide can be considered an occupational injury under health & safety law. This question is about the fundamental boundaries of an employer’s responsibility. The traditional view tends to be that what happens outside the workplace and on the employee’s own time is the employee’s own responsibility, but if an employee takes his or her own life for reasons that can be very clearly linked to conditions at work, in some countries, the lines begin to blur.

For example, in a Greek case, the suicide of an employee following from excessive psychological abuse and overwork was considered a work accident, causing the employee to destructively self-harm. In Belgium, an employee attempted suicide on his way to work and even though attempted suicide is self-inflicted, it was found that this was not a voluntary act because of the employee’s psychological state – and therefore it was deemed an occupational injury. By contrast, in the Czech

Republic, the fact that a suicide was carried out by an individual meant it was considered voluntary, and not an occupational injury. In China, lawyer Tracy Zhu reports that “the law explicitly states that suicide is not occupational injury – with no exceptions.” In Ukraine also, suicide would not be considered a work accident. So, the picture is by no means uniform.

In the aftermath of a suicide, in some countries, the authorities have a duty to investigate whether the employer took the necessary steps to protect the employee’s health and may fine the employer, if found wanting. The authority may also make recommendations.

Generally, if a suicide is found to be the result of failings by the employer – which is a very serious outcome - we would advise for the employer to do its own internal investigation and put appropriate measures in place to reduce the risk of another such incident. The labour authorities may take a keen interest in the steps the employer takes.

THE CASE FOR MENTAL HEALTH

Mental health-related case law from across the world



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Many courts across the world have ruled on mental health cases and continue to do so in growing numbers, particularly in the larger liberal western economies, such as the US and western Europe, along with parts of South America. In the US, in 2016 alone, there were almost 5,000 administrative charges reported to the Equal Employment Opportunity Commission (EEOC) based on mental health conditions and approximately USD 20 million was obtained for individuals with mental health conditions who were unlawfully denied employment and/or reasonable accommodations. The full figures across the US, including charges filed with state agencies, informal settlements, litigation settlements, and court verdicts are likely to be much higher.

However, it is notable that in a number of countries, court cases relating to mental health in the workplace are almost completely unknown. These included Cyprus, Latvia, Estonia, Slovakia, Croatia, China, Hong Kong and Kazakhstan. In terms of why, some countries cite the high hurdles that would have to be jumped for mental health issues to be recognised under existing law. José Antonia Valdez, partner in our Peruvian firm explains that “claims often fail, as employees find it hard to meet the burden of proof.” Again, in Ukraine there have been no successful cases to date, with the high burden of proof being a factor.

Yet, in many countries, the trend is toward greater awareness of mental health issues amongst

employers, even if matters have not got as far as the courts in large numbers. Below are some cases from a range of countries, illustrating the sorts of mental health effects that have been protected by the courts:

THE THIN LINE BETWEEN PHYSICAL AND MENTAL HEALTH

Certain cases have put a spotlight on the boundaries between physical and mental conditions, and it seems that these may be starting to erode in some places. A Belgian case looked at whether a heart attack can constitute an occupational injury. The court found that it was triggered by stress at the workplace and therefore did qualify. Similarly, in Greece in a recent first instance judgment, the court ruled that an employee’s death at home of a heart attack could be considered a work accident if attributable to work stress. The employee had found a planned restructuring intensely stressful and the court ordered the employer to pay EUR 160,000 to the family.



In many countries, the trend is towards greater awareness of mental health issues amongst employers, even if matters have not got as far as the courts

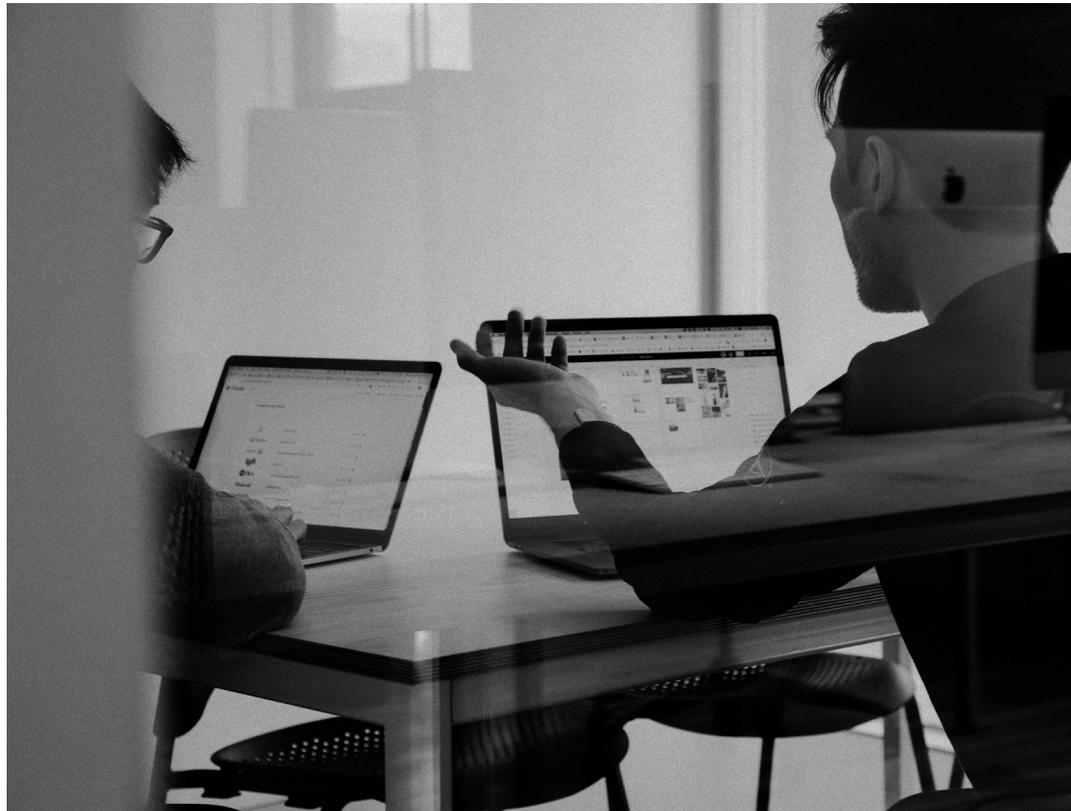
ATTEMPTED SUICIDE AND ONLINE SHAMING

Peter Kiely, partner in our New Zealand firm reports a case where an employee suffered anxiety and depression before commencing work with Richora Group. For the first three weeks of her employment, she worked 56 hours per week. She asked for this be reduced to 20 hours. She had also not been paid. Subsequently, Richora Group was investigated by the Inland Revenue Department following a complaint that it was failing to pay workers. The owner met with the employee, accused her of making the complaint and proposed she resign. She suffered an acute stress reaction and tried to commit suicide. A few days later, the owner uploaded posts to the local Chinese Community of Commerce online chat, describing her (without naming her) as a “despicable and shameless person” and that “people who are not normal and positive or defective in moral and ethics really should not be employed”.

The Court held that she had been constructively dismissed and that the dismissal was unjustified, noting the company’s actions fell well below the minimum standards expected of an employer. The Court awarded her unpaid wages and three months’ lost pay. It also awarded the total amount of compensation for hurt and humiliation that she asked for (NZD 20,000) - saying it would have awarded more had it not been limited by the amount she claimed.

A “HOSTILE” WORKPLACE

Enrico Munita, partner at our Chilean firm tells us of a case of the Labour Court of Curicó, in which the court ruled in favour of a woman for violation of her right to physical and psychological integrity at work. She experienced inappropriate and improper treatment and humiliation



by her supervisor and co-workers. A Labour Inspectorate investigation revealed that most of the employees considered the workplace hostile. The supervisor was authoritarian and the abuse consisted of mockery, humiliation, shouting, rude treatment and excessive workload, causing considerable stress to workers. The remedies were wide-ranging: an order to cease the infringing practices, to implement training for all employees on fundamental rights, to apologise in writing to the employee, to pay the employee moral damages and all medical expenses, plus a fine at the legal maximum rate of 60 units (approx. USD 3,770).

Similarly, in a case that proved expensive for the employer in Brazil, the Superior Labour Court ordered class action damages of BRL 700,000 (approx. USD 150,000) following authoritarian and harsh treatment of workers.

PTSD

Irish partner Shiobra Rush tells us of a 2018 case in which the court found the employer had failed to provide a safe place of work. The plaintiff experienced five incidents where staff acted in an “aggressive, threatening and abusive manner towards her”. She experienced significant stress and was diagnosed with post-traumatic stress disorder.

But a single incident can be enough in Ireland. In a case against An Post, the plaintiff’s psychiatrist diagnosed her with post-traumatic stress in 2008 as a result of one incident of verbal assault and threatened physical assault, coupled with later shunning by colleagues on her return to work several weeks later. She was awarded EUR 161,000 in compensation. The High Court was critical of An Post saying it made no attempt to caution her colleagues that their behaviour was unacceptable.



CHANGE IS A FOOT

New law and proposals for new law from around the world

In many places, there is increasing awareness and openness about mental health and this is starting to translate into legislative proposals across the world, some of which have recently become law. In other places there are calls from NGOs and other stakeholders for change. And things may be set to change further, in the wake of COVID-19.

In six of the jurisdictions we surveyed (pre-COVID) there is new law. In Denmark there is a brand new law to protect mental health at work, consolidating existing obligations and raising awareness about the issues. Similarly, Mexico adopted a regulation aimed at preventing mental health issues and psychological risk factors in the workplace in October 2019. Jorge de Presno of our Mexican firm explains what this means in practice: "All employers now must identify, analyse and prevent work-related psychological risks, which means those that may trigger anxiety, sleep, stress and adaptation disorders as a result of factors such as harassment, bullying and burnout. Employers must have a policy on psychological risks and must inform employees of any steps they take to minimise risks and about how to complain and they must refer employees who have suffered traumatic events or been exposed to violence etc. at work to the relevant social security institution or private medical institution so they can receive professional attention."

In September 2018, California passed legislation creating a state agency to establish voluntary guidelines for employers on mental health in the workplace. Tim Reed, attorney in our US firm in California, explains that: "the goal of the legislation is to normalise workplace mental health so that it is seen as being on par with physical health concerns."

Meanwhile, Milena Papac, partner in Serbia explains that a New National Mental Health Strategy 2019–2026 was adopted in December 2019. "It places particular emphasis on training, prevention and a sound social approach to mental health problems – and expectations in the country are high."

New Zealand's government has recently committed to establishing an independent Mental Health and Wellbeing Commission, with the objective of nudging employers and employees towards greater wellbeing. New legislation has recently been passed and will come into force by February 2021.

In Romania, two proposals have recently entered into force, one introducing the concept of moral harassment at the workplace and the other centering on psychological violence and bullying and providing a definition of discrimination and harassment at the workplace - indicating increasing interest in this field.

IN THE PIPELINE

In Finland, there is a citizen's initiative regarding swift access to therapy that is currently being considered by the Parliamentary Social Affairs and Health Committee. This would ensure access to mental health care, immediately following a first visit to a health centre. The Ministry of Social Affairs and Health has also started to prepare a mental health policy strategy, extending to 2030. The objective is to ensure mental health work continues in a goal-oriented way and it includes a programme for suicide prevention. Meanwhile, the Luxembourg government is drafting text which would invite companies to set up action plans to minimise psychosocial risks. In Brazil, there are two bills that propose criminal sanctions for moral harassment in the workplace.

All of these new laws and proposals signal a change of priorities and direction and we advise employers operating in the jurisdictions concerned to consider how to ensure their workplaces keep pace with developments.

NEW LAW AND PROPOSALS FOR LAW PROTECTING EMPLOYEE MENTAL HEALTH

16%

New laws

8%

Active legislative proposals

22%

Calls for change

8%

Failed or postponed bills

46%

No action taken



11 TIPS FOR PROMOTING GOOD MENTAL HEALTH

Not all employers are multinationals with resources aplenty, but there are still things that many employers can do to head off the most serious potential consequences of poor mental health at work. And in the wake of COVID-19, it is important that as many employers as possible begin thinking about these issues. After all, there can be cost savings in the long run for businesses that have a healthy workspace. Here is what our lawyers say:

01

ENCOURAGE GOOD WORK-LIFE BALANCE

Make sure staff to take regular breaks and limit out-of-hours emailing.

02

CREATE A SAFE FRAMEWORK FOR DISCLOSURES

For this you need to create a safe space. Make sure people know what they say will be kept confidential and be clear about boundaries. Think about how, where and when you can have conversations with employees and who is the right person to do it. Make sure these conversations aren't used to critique the employee's performance.

03

IMPLEMENT A SOUND POLICY AND MENTAL HEALTH PROGRAMME

Try to provide the resources needed to manage any mental health issues you identify, subject to your budget. In your mental health policy, include an option for employees to complain.

04

DO ALL HEALTH AND SAFETY ASSESSMENTS REQUIRED BY LAW

These vary, but some countries require employers to assess psychological workload, for example.

05

PROVIDE GOOD LEADERSHIP

Healthy leadership is the best form of prevention, so ensure your leaders fully endorse your policies and mental health programme and that they participate in any initiatives and communicate their support for them. Having leadership set the right example can help to show employees that the door is open and it is okay to talk.

06

TRAIN STAFF

Carry out mental health training so that at least one member of each team knows how to deal with mental health issues.

07

DON'T BE COMPLACENT

Encourage feedback on your mental health initiatives by conducting regular employee surveys. Assess whether any problem is based on the immediate circumstances of the employee or indicates a more systemic problem – and take any measures necessary to deal with your findings. This could mean making reasonable adjustments to accommodate people who are struggling as a result of mental health issues.

08

EMPOWER EMPLOYEES TO SELF-CARE

Encourage employees to adopt strategies to take care of their own health, using behavioural training, self-management skills and mindfulness. This should help prevent issues arising.

09

BE PROACTIVE

Try to spot mental health issues by looking out for behavioural changes in employees. These could relate to punctuality, communication, irritability, appetite loss or gain or changes in productivity or efficiency. Remember there is an overlap between physical and mental health, so physical complaints may indicate underlying mental health problems. Bear in mind also that the emotional needs of your employees may change. Meanwhile, don't automatically assume low use of an employment assistance programme indicates low levels of mental health issues in your company – be actively vigilant.

10

USE PROFESSIONAL SUPPORT

These could include occupational healthcare providers. If your health insurance includes mental health cover or you offer other assistance programmes, ensure staff know about these and feel empowered to use them and make sure the cover includes a range of therapies, including psychology appointments (not just psychiatry).

11

CORPORATE RESPONSIBILITY

As companies have the power to change perceptions in society, use that to communicate how forward-thinking your company is when it comes to mental health awareness. Keep up with wider social developments in order to keep your policies current. Ensure stakeholders focus on the bigger picture, beyond simple return on investment. Be aware that employee interaction with mental health programmes can be a measure of success and positively impact on staff retention.

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