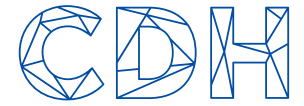


Employment Law

ALERT | 4 December 2024



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SOUTH AFRICA

Mental health and workplace safety: Evolving employer responsibilities under occupational health and safety

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Mental health and workplace safety: Evolving employer responsibilities under occupational health and safety

Mental health is increasingly recognised as integral to workplace safety. While physical health has traditionally been a focal point for health and safety practitioners, key legislation and regulations, such as the Occupational Health and Safety Act 85 of 1993 (OHSA) and the South African National Standard (SANS) 45001, address the impact of mental health on employee well-being.

Mental health in OHS framework

SANS 45001 highlights the inclusion of mental health in workplace safety, and provides a structured approach to mitigating risks to both physical and mental well-being. Similarly, the OHSA requires employers to address risks to mental health to achieve a safe work environment.

The global framework, such as the World Health Organisation's (WHO) Comprehensive Mental Health Action Plan (2013–2030) recommends organisational interventions, employee training, and robust support systems to foster a healthy workplace.

Why mental health matters in workplace safety

Unaddressed mental health issues, such as stress or burnout, can lead to absenteeism, reduced productivity, and the potential to cause workplace incidents. Employers are legally obligated to maintain an environment free from mental health risks by adopting preventative and supportive measures.

Mental health concerns affect employee performance, which could result in incapacity measures being taken. The Labour Appeal Court's decision in *Independent Municipal and Allied Trade Union obo Strydom v Witzenburg Municipality and Others 2012 7 BLLR 660* (LAC) is particularly instructive. The employee had been absent from work for approximately eight months due to mental illness; he was suffering from severe depression. Following an unsuccessful application for permanent medical boarding, the employer conducted an investigation and concluded that the employee was permanently unable to work, and subsequently terminated his employment. The court emphasised the necessity of examining whether mental health conditions contributed to an employee's poor work performance. The court clarified that when an employee's mental health affects their capacity to perform, the employer must still comply with the Code of Good Practice on Dismissal when considering any possible dismissal. This includes conducting an investigation to determine:

- whether the employee can continue working in their current position or another suitable role; and
- whether reasonable accommodation or adaptation of working conditions may enable continued employment.

**EMPLOYMENT LAW
ALERT**

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Only if these enquiries demonstrate that no reasonable accommodation is viable may dismissal for incapacity be deemed fair. A failure to follow these prescribed steps could render the dismissal unfair.

Employers should be made aware that, in practice, treatment of employees with mental health issues should be accommodative, and not exclusionary. The Employment Equity Act 55 of 1998 prohibits harassment as unfair discrimination based on both listed and arbitrary grounds. The Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace further expands on this, covering harassment based on gender, race, disability, and psychological harm. Employers are obligated to implement proactive measures such as clear policies, regular training on the purpose and intent of the Code of Good Practice, and confidential complaint mechanisms to support an inclusive work environment.

Building a supportive workplace

Employees can use frameworks such as SANS 45001 and the WHO's guidelines to integrate mental health in relevant occupational health and safety practices. Proactive policies that prioritise mental well-being enhance employee productivity and employer compliance.

Conclusion

The inclusion of mental health in workplace safety reflects its growing societal significance. By embracing this shift, employers meet their obligations and create engaged, sustainable workforces.

Next in the series

The next alert will explore practical approaches that employers can take when addressing health and safety in the workplace.

Fiona Leppan and Dylan Greenstone



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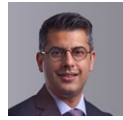
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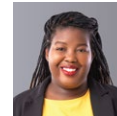
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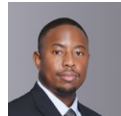
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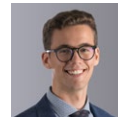
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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