

A Guidance on Mental Health and Your Rights in the Workplace

At HKKLAW, we recognise the profound impact that workplace environments have on mental health and overall well-being. Our firm is dedicated to providing expert legal advice and support on matters related to mental health in the workplace, safeguarding the rights and welfare of employees empathetically while assisting employers in fostering a supportive and compliant work environment.

Our expertise extends to providing strategic advice that protects individuals experiencing mental health challenges, ensuring that their rights are respected and protected, especially in situations where mental health may affect work life. Our goal is to ensure that employees receive the support, adjustments and understanding they need to thrive in their roles, safeguarding their well-being and employment rights.

For employers, we offer strategic advice on implementing policies and practices that promote and support mental health awareness, maintaining a supportive work environment that prioritises mental health, ensuring that mental health in the workplace is managed with compassion, best practices for mental health policies, reasonable adjustments and how to approach mental health-related absences or performance issues, thereby preventing discrimination and complying with employment law. By fostering a workplace culture that values mental health, employers can not only comply with legal obligations but also enhance employee well-being and productivity.

At HKKLAW, we are dedicated to empowering both employees and employers with the knowledge and tools needed to navigate the complexities of mental health in the workplace. Our expertise in employment law, combined with a deep understanding of the sensitivities surrounding mental health, positions us uniquely to offer balanced, effective solutions for all parties involved.

Introduction

For many individuals, the workplace is much more than just a source of income; it is a fundamental part of our daily lives, shaping our routines, friendships and overall sense of fulfilment. A rewarding and engaging job can significantly enhance our mental health and general well-being, contributing to a sense of purpose and belonging. However, it is natural to encounter periods where the pressures of work or personal challenges weigh heavily on us, impacting our mental health. Whether stemming from tight deadlines, extensive travel, health concerns, relationship issues, or other personal circumstances, it is important to recognise and address the mental health implications of these stressors. This recognition underlines the critical need for supportive work environments that prioritise mental health and provide the necessary resources and adjustments to help individuals navigate these challenges effectively.

Mental health is an increasingly recognised and crucial aspect of overall well-being, with significant implications for both employees and employers in the workplace. Understanding the rights and responsibilities related to mental health can help create supportive,

inclusive and productive work environments. This guidance provides an overview of mental health rights in the workplace from both the employee and employer perspectives.

For Employees:

1. Legal Protections: Under the Equality Act 2010, mental health conditions that meet the criteria for a disability are protected against discrimination. This Act makes it unlawful for an employer to discriminate against employees because of a mental health condition. A mental health condition is considered a disability if it includes conditions that are long-term (lasting or expected to last at least 12 months) and have a substantial impact on day-to-day activities. Employees with such conditions are entitled to fair treatment and reasonable adjustments.

2. Reasonable Adjustments: If your mental health condition qualifies as a disability, your employer is required to make reasonable adjustments to your work conditions to ensure you are not at a substantial disadvantage in the workplace. These could include flexible working hours, changes to your workspace or work environment or provision of additional support and resources.

3. Confidentiality and Privacy: Your right to privacy means that you are not obliged to disclose a mental health condition to your employer. However, disclosing can enable you to access support and adjustments. Employers must keep any disclosure confidential and only share information with others if explicitly agreed upon with you and use it solely for the purpose of supporting your needs.

4. Seeking Support: Employees should feel encouraged to seek support from their employer, HR department or occupational health services for assessments and recommendations on adjustments. Many workplaces also offer access to counselling services or employee assistance programs (EAPs). You should also understand your entitlements under your contract and statutory sick pay (SSP) provisions.

For Employers: Your Responsibilities and Best Practices

1. Creating a Supportive Environment: Employers have a duty to promote a culture of openness and inclusivity where employees feel safe to discuss mental health issues. This includes implementing and communicating policies that support mental health awareness and prevention of discrimination, promoting awareness, reducing stigma and providing access to support services.

2. Recognising and Accommodating Needs: Be proactive in recognising the signs of mental health struggles and be prepared to discuss and implement reasonable adjustments to support affected employees with their continued employment and productivity.

3. Training and Resources: Provide training for managers and staff on mental health awareness, in particular to recognise signs of mental health issues and understand how to approach sensitive conversations, and the importance of a supportive workplace. Ensure that resources are available for both employees seeking help and managers looking to

provide support by implementing an Employee Assistance Program (EAP) to offer professional support to employees dealing with mental health challenge.

4. Legal Compliance: Understand and comply with legal obligations under the Equality Act 2010 to prevent discrimination, provide reasonable adjustments and protect employees' rights related to mental health.

5. Managing Absences and Return to Work: Develop clear policies for managing absences due to mental health, ensuring consistent and fair treatment and to support a phased return to work for employees coming back from long-term mental health-related absences, considering flexible working arrangements and adjustments.

Conclusion:

The importance of mental health in the workplace cannot be overstated, with implications for individual well-being, workplace productivity and legal compliance. By understanding and upholding the rights related to mental health, both employees and employers can contribute to a healthier, more supportive workplace environment. Employers should take active steps to support mental health, while employees should know their rights and feel empowered to seek the support they need.