

MEDIA RELEASE

Redundancy fears and business stress contribute to an increase in mental illness in the workplace

Failure to take necessary steps expose businesses to potential litigation

5 March 2009 – The gloomy economic climate has created a heightened sense of anxiety among many employees as they worry about the possibility of losing their job. According to Greg Robertson, General Counsel for Harmers Workplace Lawyers, employers are now facing the prospect of increased cases claiming psychological damage and mental illnesses such as depression in their workforces, which in turn poses potential legal challenges for businesses.

He said, “While some employment sectors naturally have a higher number of cases of stress and depression, such as emergency services operators who are often placed in very traumatic situations, we are seeing a significant increase in mental illness cases amongst employees in many other sectors as the economic situation deteriorates and redundancies and rumours of redundancies take hold.

“This high-anxiety situation may have serious legal and productivity related ramifications for businesses. From a legal perspective, employers who ignore the situation open themselves to significant legal risk, for example, for breach of anti discrimination and occupational health and safety laws, for breach of contract claims, for action based on the employer’s negligence, or even a combination of all these kinds of action. Practically, employers can face an increase in their workers’ compensation premiums, and will see productivity suffer due to higher employee absenteeism and low morale.”

Mr Robertson said part of an employer’s common law duty of care to their employees is to take reasonable care of the safety of the employees. This includes an obligation to take reasonable care of the mental health of employees. Imposed on top of this obligation is the statutory duty under occupational health and safety legislation to “ensure the health, safety and welfare at work of all the employees”, an obligation that extends to the “mental” safety and welfare of all employees. The duty to “ensure” such health requires employers to take all possible steps to prevent the development or aggravation of mental illness due to work-related pressures. Failure to take reasonable care of an employee can give rise to legal action based on negligence of the employer. Breach of safety legislation can lead to significant fines.

“Furthermore, it is also becoming more widely accepted that an employment contract contains an implied term that obliges the employer not to undermine the trust and confidence that the employee places in the employment relationship. If an employer is found to have breached its contractual duty of care, or the term of trust and confidence, the employer may be liable in damages to the employee, for economic loss and the injury suffered as a result of the breach, including a psychiatric injury,” said Mr Robertson.

Jay Spence, Psychologist at South Pacific Private, notes that approximately a fifth of the people in the workforce are suffering from anxiety or depression at any time. “Studies have shown that creating a committee to determine the sources of job-related stress directly resulted in decreased levels of stress, as people perceive an increase in social support and office harmony,” he said.

Mr Robertson said, “While the adverse economic climate may not appear to be improving any time soon, there are several steps employers can take to help prevent the rise in workplace mental illness and to protect from litigation. One key measure, approved by the courts, is having an employee assistance program in place — somewhere employees can go to get some advice and counselling as a result of what is happening at work or at home. However, while preventative initiatives have the potential to lessen the risk of mental illness in the workplace, it is important that employers are aware of their obligations in relation to employees who may be struggling with a mental health problem, whether work-related or not.”

Practical advice for business on how to avoid mental illness

Mr Roberston said there are a number of prevention strategies that employers can put in place to minimise the risk of mental illness in the workplace. These include:

- Have a clear anti-bullying policy to combat interpersonal conflict in the workplace.
- Changing the organisational structure of the workplace by conducting an organisational risk assessment;
- Changing the content or type of work employees are expected to carry out;
- Encourage an improved level of physical fitness in the workplace e.g. gym membership incentives or providing access to healthy snack food;
- Taking measures to improve employees’ work management skills.

Mr Spence said that if a work-related mental illness such as high anxiety or depression develops, there are often ‘warning’ signs that employers should look out for. They could include:

- Increasing numbers of unplanned absences
- Increased irritability or conflict in the workplace
- Indecisiveness of staff
- Loss of sense of humour
- Changes to work patterns (such as staying late, or taking work home)
- Increase in customer complaints
- Poor quality of work
- Greater use or abuse of drugs and/or alcohol
- Increased use of staff support services

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Note to editors:

About Harmers Workplace Lawyers

Harmers Workplace Lawyers was established in 1996 as a boutique employment law firm. Since then it has become one of Australia’s leading employment and industrial law firms, with offices in Sydney, Melbourne and Brisbane. The firm has been awarded Australasian Legal Business’s ‘employment specialist firm of the year’ for the past three years running.

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