

How to manage mental health related issues in the workplace

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Managing mental health related issues in the workplace can be difficult. Employers should manage employees with mental health related issues carefully and fairly, working with, rather than against, employees with mental health related issues. This may alleviate the need to terminate an employee's employment and assist the employee in dealing with their mental illness.



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Mental health related issues can lead to decreased productivity and work performance, poor working relations amongst colleagues and increased sick-related absenteeism. It can also compromise workplace safety.

Over the last few years, employers have experienced an increase in the number of employees suffering from mental health related issues in the workplace. Covid-19 has seen a refocus on mental health in the workplace. Covid-19 is, however, only an additional factor to mental health issues in the workplace. Poor working conditions, excessive or insufficient workloads and poor leadership may also contribute towards employees suffering from mental health related issues.

Depression is one of the most prevalent mental health issues suffered by employees in the workplace. According to The World Health Organisation, approximately 350 million people suffer from depression around the world. Around 27% of South Africans suffer from depression. It is also estimated that employee absenteeism on account of depression costs the South African economy approximately R19bn annually. From a labour law perspective, the Labour Appeal Court (LAC) in the Jansen judgment (*Legal Aid South Africa v Jansen [2020]*) accepted that depression should be looked at as a form of ill health within the workplace environment.

Management

In terms of managing employees with mental health issues in the workplace, employers should adopt a proactive approach

which would include:

- Educating employees on mental health issues and how it may impact their work performance or conduct in the workplace;
- Training managers on how to identify signs of mental health issues from employees at an early stage in order to provide the necessary interventions as soon as possible;
- Supporting employees by maintaining regular communication with them; and
- Encouraging employees to utilise their annual leave to rest and recuperate from time to time.

Notably, employers should guard against disciplining or prejudicing employees who suffer from mental health related issues. When an employer identifies any sign of a mental health issues from an employee, an employer should first consider an informal approach in assisting the employee as far as reasonably practicable. This may include granting the employee time off in the form of sick/annual leave and/or providing counselling to the employee. Some employers have established Employee Assistance Programmes to support employees dealing with mental health issues. These Employee Assistance Programmes will not only be beneficial to the employee's well-being but will also maintain their good work performance and good conduct in the workplace. If an employer does not have an Employee Assistance Programme, employers should educate employees on institutions such as the South African Depression and Anxiety Group.

Many employees suffer in silence and may be afraid to disclose their mental health issues to their employer in fear of being prejudiced or stigmatised in the workplace. To alleviate these fears, employers should create an environment that is free for employees to disclose their mental health issues before it has a negative impact on the employee's work performance, or results in inappropriate conduct in the workplace. In turn, employees should be open to their employers regarding their mental health issues as many employers may be able to provide them with the necessary assistance.

Incapacity

Where, however, a mental health related issue persists, and consequently impacts on the employee work performance (or conduct in the workplace), it may result in the termination of their employment due to incapacity.

Insofar as depression is concerned, the LAC in *Jansen* expressed that depression which results in an employee becoming incapacitated may be a legitimate reason for terminating the employment relationship provided that a fair procedure is followed by the employer.

The *Code of Good Practice: Dismissal* places an obligation on an employer to ascertain whether the employee can perform the work for which s/he was employed. If the employee is unable to perform their normal duties fully, the employer must establish the extent of the employee's incapacity and its likely duration.

In *Jansen*, the LAC confirmed that if an employee is temporarily unable to work for a prolonged period due to depression, the employer must investigate and consider alternatives short of dismissal before resorting to dismissal. If the depression (or other mental health issue) is likely to impair the employee's performance permanently, the employer must attempt first to

reasonably accommodate the employee's disability. This may be ascertaining whether alternative work can be found for the employee, even if it is at reduced remuneration.

In addition to the above, procedural fairness will entail that the employee has been properly counselled and the impact of their mental health issues on their performance or conduct has been discussed with them. An employee must also be provided with a fair opportunity to contest the employer's conclusions about their mental health issues.

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