

# The mental health of higher education staff – duty of care in uncertain times

As we embrace mental health awareness week from 18 May 2020, it is timely to reflect on some of the steps that HEIs can take to discharge their duty of care in uncertain times.

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**Please note: the information contained in this legal update is correct as of the original date of publication**

As we embrace mental health awareness week from 18 May 2020, and following the publication of the Higher Education Policy Institute (HEPI) report *Pressure Vessels II: An update on mental health among higher education staff* published on 30 April 2020 it is timely to reflect on some of the steps that HEIs can take to discharge their duty of care in uncertain times.

## Duty of care – practical steps to mitigate the risk to the mental health of higher education staff

Now more than ever, Higher Education Institutions (“HEIs”) will want to continue to work to support their staff and mitigate the risk to them as individuals and to the institution. This is even more challenging in these uncertain times. The duties of employers in relation to workplace stress and mental health derive from a variety of statutory and common law sources. Although there is no specific legislation considering employees’ mental health at work, there are a number of general obligations on employers which encompass this. For example, under section 2 of the Health and Safety at Work Act 1974, all employers have a statutory duty to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all employees. This duty sits alongside an employer’s common law duty to take reasonable care for the health and safety of their employees, including providing them with a safe place of work and a safe system of working.

The Health and Safety Executive (“HSE”) has issued guidance in relation to workplace stress. This guidance deals with workplace stress generally but acknowledges that where an employer does not respond to the issue of workplace stress, it will likely develop and can lead to employees suffering mental health problems. Equally, workplace stress can aggravate an employee’s existing mental health problems.

HSE has considered that the key to responding to workplace stress is to do so early in order to lessen the impact it will have on employees. One of the best ways to monitor stress levels amongst employees and to identify any areas that require particular action is to conduct a stress risk assessment. Employers are legally obliged to do this and where an employer has more than five employees, the risk assessment must be documented.

Although stress affects everyone differently, the HSE has identified six areas which are most likely to affect employees’ stress levels and should therefore be a focus of any workplace stress risk assessments. These are:

- Demands
- Control
- Support
- Relationships
- Role
- Change

In the current climate, it is likely that change will have an increasing impact on employees' levels of stress at work and their mental health. One of the main ways in which an employer can help to reduce the impact of change on employees is to consult with them in relation to proposed changes and to ensure that any changes are communicated openly before they are made. A feedback route could also be developed, for example an employee forum, to give employees the opportunity to discuss the impact of any changes and make suggestions. An employer should listen to feedback and take measures to support employees in adapting to changes. For example, employees may require further IT training now that they are working remotely.

Another way to identify workplace stress early is for employers to be able to recognise signs of stress. Some of the most common signs are an increase in sickness absence, decreased performance and mood swings. Other signs include not checking in on catch up meetings, sending aggressive or out of the ordinary emails, not responding to calls, or showing a decline in productivity. It may be useful to have a "mental health first aider" who is responsible for monitoring the areas in which workplace stress may initially become apparent to ensure that any areas of concern are picked up on quickly. This may be more difficult with everyone working remotely and signs of stress being harder to identify so it is important to maintain regular contact with employees.

If an employee is showing signs of suffering from workplace stress, the initial step any employer should take is to talk to the employee. If an employee is uncomfortable talking to their employer, they should be encouraged to talk to someone else such as their GP, trade union representative or an occupational health adviser. Most Universities also have a confidential counselling service that they could access. Having that initial conversation with an employee can be difficult given the sensitivity of the subject. HSE have devised a Talking Toolkit to assist employers in holding these initial conversations.

## Potential consequences

If employers do not follow the relevant guidance, they open themselves up to numerous potential claims. These include but are not limited to personal injury claims, discrimination claims and breach of contract claims. If a claim is successful, it will usually mean that an employer must make a civil pay-out.

In summary, all employers should continue to follow HSE guidance on how to manage workplace stress, and even more so during the Covid-19 pandemic. During this period of uncertainty in which employees may be feeling increasingly anxious or stressed, an employer may need to consider some of the practical ways suggested above in which they are able to comply with their obligations as a result of most employees working remotely.

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