

Damage awards for mental injury at work soaring

Absenteeism, fines and damaged reputation possible if psychological safety ignored

By Amanda Silliker

Financial rewards for damages caused by mental injury at work have increased over the past five years by 700 per cent, according to a report by the Mental Health Commission of Canada (MHCC).

“Employers should be proactive in terms of the measures taken to enhance the psychological safety of employees,” said Lynn Harnden, partner at Ottawa-based law firm Emond Harnden. “The reality is that employers should guide themselves on the premise that they do bear legal duty to maintain a workplace that provides psychological support and safety to its employees.”

In recent years, courts have become increasingly intolerant of lack of attention to mental health in the workplace, ordering management to change workplace habits that may threaten psychological safety and imposing large financial punishments, found the report.

Mental injury at work is the harm to the mental health of an employee that significantly affects his ability to function properly, said Mary Ann Baynton, member of MHCC’s workforce advisory committee and program director for the *Great-West Life Centre for Mental Health in the Workplace* in Toronto.

“(Mental injury) is things like depression, anxiety and burnout which isn’t the same as mental illness,” said Baynton. “Employees do not have to prove they have a diagnosable mental illness to get a claim.”

***Mental Health in the Workplace: The Perfect Legal Storm* estimates mental illness costs the Canadian economy \$51 billion per year in terms of health care service use, lost workdays and work disruptions. Between \$3 billion and \$11 billion could be saved annually if mental injuries caused by the actions of employers were prevented, said the report.**

In terms of the individual employer, mental injury can lead to costly court cases, absenteeism, decreased morale, lack of productivity and a tarnished reputation, said Baynton. If the business is being negatively impacted because of the lack of attention to mental health, it could “result in the decline of the business itself,” she said.

“The more serious consequence is the legal one but it may not be the most costly,” said Baynton. “This needs to be seen as a business strategy as much as it is complying with laws and regulations.”

In 2008, the Ontario Superior Court of Justice awarded Marta Piresferreira more than \$500,000 in damages from her former employer, Bell Mobility. In *Piresferreira v. Ayotte*, the court found Bell Mobility and Piresferreira’s supervisor, Richard Ayotte, jointly liable for an assault she suffered in the workplace by Ayotte.

After an attempt to arrange a meeting with clients failed, Ayotte yelled at Piresferreira, told her to “get the hell out” of his office, pushed her and threatened her with a performance improvement plan.

A few days later, when there was no apology from Ayotte and the performance improvement plan was implemented, Piresferreira lodged a formal complaint with HR. Her complaint did not yield any action against Ayotte. She went on sick leave and eventually long-term disability and was diagnosed with depression, anxiety and post-traumatic stress disorder.

Mental injury can occur in the workplace as a result of acute or chronic exposure to negligent, reckless

or intentional acts, said Len Hong, president and chief executive officer at the Canadian Centre for Occupational Health and Safety. This can take the shape of work overload, being pulled in too many directions, lack of control over the job, lack of clear direction or lack of reward or recognition, he said.

“After a while people feel underappreciated for overextending themselves, working long hours and travelling all over,” said Hong. “We’re all human beings and we like being recognized for the extra effort we put in for the benefit of doing the job well.”

The result is resentment builds up within the employee and the qualities he tries to maintain at work, such as being friendly, helpful and an ideal employee, start lagging, said Hong. The employee may go beyond normal coping abilities and start reaching various levels of mental injury.

Symptoms that an employee may be suffering distress include sudden performance below his expected levels or a change in behaviour causing agitation, depression, withdrawal or anxiety, said Hong.

There are many things employers can do to help prevent mental injury at work. First, mental health and psychological safety must be embedded in the occupational health and safety approach, said Baynton.

“The company needs to decide how important mental health is in the workplace and acknowledge the workplace structure, how work is assigned and how people are managed, and then decide as an organization to fix anything that may be a hazard to mental health,” said Hong. Once it’s part of the health and safety culture, mental health should be considered in all policies and procedures.

A roundtable discussion of the report found mental injury should be assessed at all levels including recruitment, orientation, evaluation, intervention, return to work and termination, said Baynton.

“Employers should be looking at the organizational structure and job design and considering, throughout the course of an organization, where psychological safety may be impacted,” said Baynton.

Managers and supervisors need to be trained to identify the symptoms of psychological disorders so they can initiate appropriate discussions or medical interventions when necessary, said Harnden. This should be recognized as being a part of the manager’s job and be valued as an essential and key component of the position, said Hong.

Another thing employers can do is help create awareness about mental health and mental illness so employees can become self-aware and reach out for help when necessary, said Baynton.

Mental health is still something many people feel embarrassed about discussing due to the stigma attached, said Hong. Awareness campaigns can help reduce the stigma and show employees there is support available to help handle these issues.

“Employers often feel that their task is done once policies are initiated and managers are trained,” said Harnden. “However, unless employees have confidence in receiving a supportive response to their disclosure of psychological conditions, they will attempt to disguise the problem and will ultimately exacerbate the difficulties it presents in the workplace.”

When an employer becomes aware an employee is exhibiting symptoms of psychological disorder, he should ensure confidentiality and record all steps taken, said Harnden.

“The careful recording of the initiatives taken is essential to prepare for the eventuality that the employer’s response is examined in the context of a labour arbitration proceeding, a court proceeding or a human rights proceeding,” he said.

The manager should have an open discussion with the employee to identify the issues and the remedies the employee is seeking, said Hong.

Management should also direct the employee to the right level of help, whether it is an employee assistance program, the employee’s general practitioner or a mental health expert, he said.

But it doesn’t stop there, said Hong.

The employer should look at the workplace as a whole to determine if other employees are experiencing similar issues, he said.

Surveying the workforce is a great way to do this, he said, whether through internal or external means. A variety of online surveys, such as the one from the Great-West Life Centre for Mental Health in the Workplace available for free at www.guardingmindsatwork.ca, will determine which department, areas and personnel are feeling overworked, overstressed or underappreciated, so the employer can put programs in place, reevaluate the culture and address the issues, said Hong.

“Psychological safety should be seen as a workplace issue and the employer should try to figure out what’s going on, whether employees are overloaded or highly stressed, and what can be done so this doesn’t happen again,” he said.

Benefits of a mental health strategy

Productivity: Happy and psychologically healthy employees work harder and more efficiently.

Recruitment and retention: Employees expect a workplace that supports their personal and professional growth.

Costs due to disability and absenteeism: There is a strong link between mental health, physical well-being and injury prevention.

Conflict reduction: Better mental health among employees means fewer grievances and complaints and a stronger corporate reputation.

Operational success: Mentally healthy workplaces are characterized by higher levels of employee motivation, commitment, innovation and creativity as well as fewer errors, better decision making and improved planning.

Source: Mental Health Commission of Canada

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