

A&L Goodbody

# Mental Health in the Workplace

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**Q:** To what extent should you consider **employees' mental health** when evaluating underperformance, grievances, or recommending a suspension - in the absence of meaningful medical information?

# Connacht Gold Co-operative Society v A Worker [Dec 2008]

- The employee claimed he was **discriminatorily dismissed** on grounds of **disability** and that his employer failed to have regard to any form of reasonable accommodation.
- The employer argued it had **no knowledge** the claimant was suffering from **depression** as medical certs stated that the employee was unfit for work due to “illness/medical illness” and “stomach trouble”.
- The Labour Court found that the employer was **not aware** of the claimant’s diagnosis and it was supported in this conclusion by the **lack of indications** that he was suffering from depression.
- The Labour Court indicated that **had there been signs of the claimant’s disability**, such as unsatisfactory work performance, the employer **would have been aware** of the disability and required to consider reasonable accommodation.
- The reference to the fact that there were no signs, symptoms or indications of a disability is indicative of an **objective test** for the state of knowledge required.
- An employer must be able to demonstrate it had **no actual or constructive knowledge** of an employee’s disability to show that it was not aware of it.

# Ms A v A Retail Business

[Oct 2017]

- The complainant suffered from **depression** and **anxiety**.
- She made her employer aware.
- The complainant **breached** the absence reporting policy and **did not respond** to the numerous attempts HR made to contact her about returning to work.
- She was warned and ultimately **dismissed** due to her silence.
- The AO awarded **€45,000** (18 months salary) for discrimination.
- The AO found that the respondent was **on notice** about the depression, but did **not satisfy itself properly** or at all whether it was **incapacity or wilfulness** which caused the silence.

# An Employee v A Call Centre

[July 2017]

- The complainant was diagnosed with **depression** and went on sick leave. A contributing factor was taking **customer service calls**.
- OH noted there were no accommodations to enable her to return to work at the time.
- The complainant requested an admin **role without phone work**.
- She was told this was **not possible** - all roles within the department involved phone work.
- The complainant **refused to attend an OH assessment** unless the respondent undertook to move her to a role not involving phone work.
- The complainant **terminated** her employment.
- The respondent argued the complainant did not **provide evidence** the accommodation was required.
- The AO found that the respondent **did not provide reasonable accommodation** as there was no consideration of transfer to another department or other measures. The **context** of identifying what reasonable accommodation OH may suggest was **not fully** explained to the complainant.
- The AO awarded **€5,000** (12 weeks salary) for discriminatory constructive dismissal.

# A Shop Assistant v A Shop

[Jan 2023]

- The complainant requested to work 4 days a week instead of 5 due to **mental health difficulties**.
- The respondent said they would **look into it** when drafting the next rota.
- The complainant alleged **no reasonable accommodation** was made and she was **discriminatorily dismissed** due to mental health.
- The respondent argued the complainant was dismissed due to **performance** and **level of absence** and the complainant never attributed her absence as being due to mental health.
- The AO found that the respondent **did not refuse reasonable accommodation**. It was not unreasonable to wait until the next rota before implementing the change and the respondent indicated that the request would at least be considered.
- The AO also found that the complainant **failed to establish a prima facie case** that she was discriminatorily dismissed.



Thank you

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Questions?

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