

Psychosocial harm – how to deal with it.

Introductory

We are defining psychological harm as bullying, harassment or work induced stress which is unreasonable, repeated and has the potential to cause serious mental harm.

In an employment setting, sexual and racial harassment is defined in the Employment Relations Act 2000. There is no definition of bullying so the courts have had to rely on WorkSafe guidance material. Worksafe define bullying as an action which is unreasonable, repeated and has the potential to cause serious mental harm. These criteria seem sound to us as well as tests of what constitutes bullying or harassment.

Given mental harm is typically invisible, this area is open to spurious claims from disaffected workers. On the other hand, many employers are not prepared to recognise and deal with mental harm.

The employer needs to be concerned with things related to the workplace. If there are factors outside of work, they are out of scope but perhaps very relevant – potentially more relevant than what is manifesting itself in the workplace.

If there are issues of psychosocial harm arising, there are courses of action available under the Health and Safety at Work Act 2015 or the Employment Relations Act 2000.

The HSWA requires a PCBU to eliminate harm or, if this is not possible, to minimise harm as far as reasonably practicable. “Elimination” will likely become an employment issue. But any lesser control is likely not to be “reasonably practicable” based on the proposed tests in legislation. It would require changes in the workplace or the individual’s employment conditions and thus likely be an employee relations issue. This is why we maintain psychological harm sits in the realm of HR not HSE, along with the fact that the procedures for managing this harm are part of an organisations management procedures.

What Can You Do to Minimise Workplace Bullying?

- Develop and communicate a bullying and harassment policy.
- Provide a non-threatening process for employees to raise personal concerns with their manager, or to escalate if they are uncomfortable going to the manager.
- Provide feedback where an employee’s style or pattern of behaviour leaves them open to potential claims of bullying or harassment. Head off issues by pointing out other employees’ perceptions may not align with the giver’s intention.
- On receiving a complaint – acknowledge and respond to it.

Handling complaints?

- Start by keeping it low key and informal. Potentially it can be sorted between two individuals without recourse to a formal investigation.
- If the issue remains, conduct a full and fair investigation of the complaint. The Employment Relations Act 2000 is the relevant authority for what constitutes a full and fair investigation, thus we suggest engaging internal or external expertise in this areas for support.
- Inform the complainant of the investigation’s outcome.