

Shielding Your Team: Enhancing Safety and Security in the Modern Workplace - Post-IFSEA Conference Podcast Recording Transcript

David:

Well, hello everyone. I'm David Fisher from CM Murray in London and welcome to this recording as a follow on from our panel at the IFSEA conference in London in June. This is shielding your team, enhancing safety and security in the modern workplace. What more should you do to shield your people from physical violence and online harm and how do you prepare for the potential aftermath?

What we're going to do in this session is just look at some of the key points that came out from our panel discussion. I'm joined today by Suzanne McKee from Farore Law in London, Andre Royer from Borden Ladner Gervais in Montreal, and Anne Davies who's from Richardson-Lissak also in London. Suzanne, if I can turn to you to start with please and just ask you about the impact of disabilities that affect personality and the consequences of adverse behaviour on other members of staff. And I know you've got some sort of particular examples of this that are likely to be of interest.

Suzanne:

Yes, thank you David. In my firm we do a lot of disability discrimination cases and we found recently quite a lot of matters coming across our desks involving people with declared disabilities who are relatively senior within organisations, particularly finance organisations, finance houses, and those disabilities are evidencing traits of potential underlying personality disorders of various kinds, as many people know, there's several different sorts of personality disorders, many of which can amount to disability under the Equality Act. And what we found is concerns being raised by employers about either our clients or our client is the company, the company raising with us, that those individuals are causing harm potentially or actually to other members of staff within the workplace. And the question is, you know, what does one do about that?

Our experiences that employers seem rather nervous around this particular subject. And sometimes it starts with a diagnosis that the employee themselves obtain. Sometimes it's of being on the spectrum or autism or a specific personality disorder. But what is happening in some cases is there are problems within the workplace in terms of their behaviours. And that can range from simply or behaviour in certain cases, but to the other extreme where it becomes physically threatening. So we've dealt with several cases recently where it has got to that extreme where there's physical threats. Involved often starts with verbal abuse and then physical threats. So what does an employer do? In my opinion, in our opinion, think when we've

looked at this, our first point to employers has been...don't be too nervous about getting further information by way of your own medical reports to determine whether the traits being manifested by the employee are caused in-house or in part by the disability. And even if it is found to be caused in-part or in-held by the disability, you can take steps to ensure that your other staff are safe by determining whether there is anything that can be done to assist that person's manifestations of the problems and look at medical intervention or therapeutic intervention to help with that. But where it does get extreme, you have to look at what is the most important thing. The most important thing is the safety of the other members of your staff. Now, what we have found is often policies do not include medical suspension provisions and they need to in our opinion so that the employer when looking at dealing with a situation like this isn't forced down the route of disciplinary action necessarily in order to suspend, but can suspend pretty quickly if they are concerned that the medical underlying condition is causing this unacceptable behaviour. And once they are suspended, you can then look in more detail at the medical side of things and whether there is anything that can be done. Now, of course you can, as many of the viewers may know, justify certain sorts of disability discrimination so the employer shouldn't be too concerned about taking action just because it is a detriment to the disabled person if that is outweighed by the need for to ensure the safety of other members of their staff. Obviously it's a balancing exercise, you've got to create a fantastic paper trail and get the right medical evidence to back it up.

David:

Thank you, that's good advice. I think absolutely right that for a lot of employers, clearly a very difficult situation, but a sort of a feeling that the person with a medical issue and potentially disability will possibly have a range of complaints and claims and there's nervousness about tackling these sorts of issues possibly to the detriment of the wider workforce.

Suzanne:

I think it would help just to add that the case law on these sorts of cases is generally in favour of the employer as long as there's good evidence that that disability is causing extreme behaviour that cannot be dealt with in any other way other than to suspend and potentially expel completely from the workplace.

David:

That's reassuring, should think, for lot of employers in that situation. Andre, you had an interesting point about interventions in the private sector in Canada. Would you like to tell us a little bit about that, please?

Andre:

Well, yeah, sure. You know, an employee, regardless of where he works, where he resides, should not feel ashamed or embarrassed because his mental health necessitates that he takes a leave of absence. And unfortunately, there's still a negative perception about this. Now, this mentality, has significantly changed in the last few years because mental health in the workplace has become one of the main HR issues that employers are increasingly faced with. So in Canada, in the last few years, the private sector decided to get involved in promoting awareness and offering support to employees suffering from mental health. And the best example I can provide is the initiative taken by Bell Canada which is our largest telecommunication service provider. And basically, mental health awareness has become intertwined with our branding. So what they started to do since 2010 is start a campaign which is called Bell Let's Talk campaign. And it's basically dedicated to moving forward the issue of mental health in Canada.

If we go back to 2010, most people were not talking about mental health in the workplace. So that's what it's all about, Bell Let's Talk really promotes awareness. And the first pillar of that campaign is really about, the anti-stigma that's associated when somebody takes a leave of absence, dealing with his mental health. There's also the fact that Bell decided to really get involved in funding organizations in being able to better cope with those situations and also invest in research. There's one day where it's the let's talk day and it's actually the largest conversation about mental health where you have people who are very well known from every sector, could be the business sector, actors, well known actors and singers, who have decided to come forward and talk about their mental health issue. And that's during, the Let's Talk campaign, which is a huge conversation. it certainly brought a lot of awareness and it brought a lot of companies and employers from the private sector to get involved. So that's really a positive sign that things are changing in the good direction.

David:

Absolutely. Yeah, that's a really interesting development, something that I know is becoming more, more prevalent, more widely, a lot more people willing perhaps now to talk about these sorts of issues that were in the past and a lot of initiatives going on in different ways to try and promote discussions about mental health. So thank you for sharing that.

Anne, I wanted to ask you about a particular issue that you discussed at the conference, which was if we get to the point where tragically an employee has died and it's alleged that this could have been suicide driven by some sort of unacceptable work pressure or harassment in the workplace. Could you tell us a little bit about that, please?

Anne:

Yes, so when somebody dies, then there are certain provisions under the Coroner's Act that requires coroner's inquest to be conducted. And if somebody dies of suspected suicide associated with workplace pressures or workplace conduct, then an inquest is conducted. And a coroner can decide who the parties should be that participate in the inquest. These parties are called interested parties and the coroner can ask the employer of the individual who has died to be an interested party. There are opportunities to try and put forward objections to that but generally it's quite difficult to successfully object. In the circumstances an employer then finds themselves part of this inquest process and will be asked to provide documentation such as HR files. If the matter relates to work overload, then policies and procedures in relation to managing workplace pressures. If the alleged death relates to behaviours in the workplace that haven't been managed correctly, such as harassment or something of that nature, then policies and procedures around harassment.

In addition to that, the coroner can quite often ask for a statement to be prepared that outlines the chronology of the individual's potential deterioration in health or a chronology of the way in which the harassment or workplace issues have been dealt with. And in certain circumstances, can also call individuals to give evidence at an inquest and those individuals could be work colleagues or they could be head of HR or head of department or something such as that. Hence, considerable pressure on an employer when faced with those situations. At the conclusion of an inquest, depending on the coroner's findings or the jury's findings in certain circumstances, a coroner can, and they are increasingly using this power, issue what's called a PFD, a prevention of future deaths report. And if the coroner is not satisfied that the employer's policies and procedures were such that future deaths are not capable of being prevented or are at risk of not being prevented, then the coroner in this report directs that certain steps are taken. And that direction could be things such as review your policies, review your procedures, enhance your training or provide more training depending on what the coroner's findings are. Those reports are publicly available on the government website and the report requires a response within a period of time and the response is also published, hence a very publicly available document that can have reputational issues for an organization. And we saw an example of this not long ago in the inquest of Wayne Brown, the UK's fire chief who took his own life. And there was an issue as to a probe in relation to whether he had lied on his CV.

Two issues to be aware of, namely that health is very much a focus of the health and safety executives' five-year plan and the Health and Safety Executive's chair has made it clear that there is a dissatisfaction with the progress that has been made in the UK in relation to health and wellbeing in the contrasting with the huge improvements in the level of injuries and deaths through industrial type accidents.

And the other matter of interest is that the British standards are due to publish a standard in the autumn around managing suicide in the workplace.

David:

Thank you, Anne. So that's something to be aware of and to be looking out for come the autumn. Thank you. I just want to wrap up with a further question to you, if I can please, Suzanne. We're used to seeing employers have policies in place and possibly training in place to try to prevent harassment or unacceptable behaviour in the workplace. Is it possible for an employer to go even further than this in extreme cases and possibly even try to obtain a court injunction or perhaps assist other employees to do so where there are issues with particular individual or groups of individuals causing harm at work.

Suzanne:

That's certainly possible. I think I would advise in most cases to speak to the police first because their powers of intervention are quite significant and their ability to take injunctive action is wider and it may be more rapid. However, the extent to which they are willing to intervene depends on all the circumstances of case and their resources, etc. But if it's a civil injunction, then it is possible, either supporting the employees or the employer obtaining it on their own behalf, on the basis that several of their staff may be at risk or have been placed at risk already by the actions of the individual, that yes, they can take those steps. An emergency injunction should be obtainable within 24-48 hours. The important thing to remember, of course, is the witness statement that accompanies that application must be completely true. You can't mislead the court in any way. So it's got to be thorough, detailed and show both sides of the argument, if you like. But yes, it is possible.

I would only advise it in extreme cases though, I think.

David:

Yes, thank you. Thank you to each of you. Suzanne, Andre and Anne, as I said, it's been fascinating discussion. This has just touched on some of the points that we explored more widely at the IFSEA Conference. Clearly, it's an area that's going to, I

think, continue causing concern for employers. We're aware that things have certainly increased awareness of violence in the workplace or difficulties in the workplace over the last few years. And clearly there are things that employers can be doing, should be doing to try to do it and tackle it.

So thank you to each of you for your input. Hope you've enjoyed listening to this or watching this and that you found it informative. So thank you again.