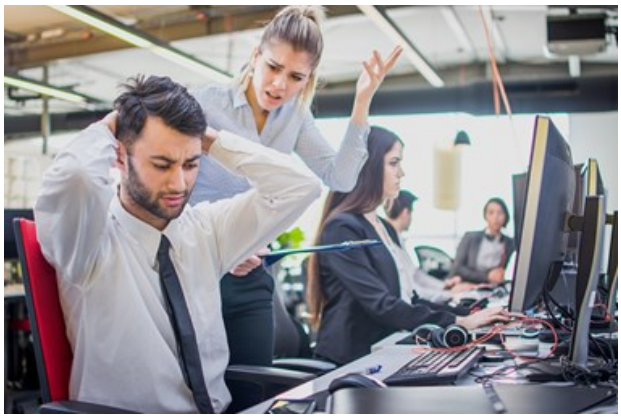
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LEGAL PRACTICE



Managing Psychosocial Hazards in the Workplace | WHS Law

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Nationally, work health and safety legislation makes it clear that a person conducting a business or undertaking (**PCBU**) must manage risks to both physical and psychological health so far as is reasonably practicable. In this article, we define and identify psychosocial hazards (risks to psychological health) in the workplace in Queensland and the duties PCBUs, officers and workers have in relation to such hazards.

Over the past few years, particularly following COVID-19, there has been an increased focus on psychological safety in the workplace. A major driver of this change is the growing understanding of the significant impact that mental health has on the overall well-being of workers, worker retention, and an organisation's productivity.

What is a 'psychosocial hazard'?

Risks to psychological health are known as psychosocial risks. The *Work Health and Safety Regulation 2011* (**WHS Regulation**) defines psychosocial risk as the risk to the health and safety of a worker or other person from a psychosocial hazard.

Under the WHS Regulation, psychosocial hazards are defined as anything in the design or management of work that increases the risk of psychological or physical harm.

These are hazards that can cause stress at work, which can negatively affect mental health. While stress itself is not an injury, frequent and elevated levels of stress over an extended period of time can cause harm.

Identifying psychosocial hazards in the workplace

There is a wide variety of psychosocial hazards in the workplace – some are common and obvious, whereas other hazards may present infrequently and be less apparent.

The '*Managing the risk of psychosocial hazards at work - Code of Practice*' (Qld) lists common psychosocial hazards, noting some may be permanent while others may present occasionally.

Below is a non-exhaustive list of examples:

- high and/or low job demands;
- low job control;
- poor support;
- low role clarity;
- poor organisational change management;
- low reward and recognition;
- poor organisational justice;
- poor workplace relationships, including interpersonal conflict;
- remote or isolated work;
- poor environmental conditions;
- traumatic events;
- violence and aggression;
- bullying;
- harassment, including sexual harassment.

Assessing the risk of workplace psychosocial hazards

Once psychosocial hazards have been identified, the next step is to assess the level of risk the identified hazards may present at the workplace. This step can assist in determining what control measures are reasonably practicable in the circumstances.

A risk assessment of psychosocial hazards should be undertaken to address:

- the likelihood of the hazard occurring; and
- the harm that could be caused to workers/others in the workplace.

In many situations, a risk assessment will identify that it will not be possible to eliminate a psychosocial risk. In those cases, the hierarchy of controls must be followed if elimination of the risk is not reasonably practicable.

The hierarchy of controls ranks control measures from the highest level of protection and reliability to the lowest. Work health and safety duty holders under the *Work Health and Safety Act 2011* are required to minimise risks by one or more of the following methods, from highest to lowest level of protection and reliability:

Substitution: substitute or replace the hazard or hazardous work practice with a lesser risk.

Isolation: minimise the risk by isolating or separating the hazard or hazardous work practice from any person exposed to it.

Engineering controls: minimise the risk by implementing engineering controls as a physical control measure.

Administrative controls: if the risk remains, it must be minimised by implementing administrative controls so far as is reasonably practicable.

Personal protective equipment (PPE): PPE should be used as the final barrier between the person and the hazard.

Determining control measures for psychosocial risks at work

The WHS Regulation identifies mandatory considerations when determining control measures for psychosocial risks.

A PCBU must have regard to the following:

- The duration, frequency, and severity of the exposure of workers and other persons to psychosocial hazards;
- How the psychosocial hazards may interact or combine;
- The design of work, including job demands and tasks;
- Systems of work used, including how work is managed, organised, and supported;
- The design, layout, and environmental conditions of the workplace, including safe access and egress, welfare facilities and any premises occupied by the worker;
- Plant, substances and structures at the workplace;
- Workplace interactions or behaviours;
- Information, training, instruction and supervision provided to workers.

Duties relating to workplace psychosocial hazards

PCBUs

Under the *Work Health and Safety Act 2011* (**WHS Act**), a PCBU has a primary duty to ensure, so far as is reasonably practicable, the health and safety of workers while at work.

Accordingly, a PCBU must eliminate the risks in the workplace that arise from psychosocial hazards. If elimination of the risks is not reasonably practicable, the PCBU must minimise the risks as much as possible.

Importantly, a ‘workplace’ includes the physical place where the work is undertaken, which includes a worker’s home if work is carried out in that location.

PCBUs must comply with the '*Managing the risk of psychosocial hazards at work - Code of Practice'*, or manage hazards and risks in a way that is different to the Code but provides an equivalent or higher standard of work health and safety.

Officers

An officer of a PCBU must exercise due diligence to ensure the PCBU complies with its duties under WHS laws, including:

- acquire and keep up-to-date knowledge of work health and safety matters associated with the operations of the business or undertaking (including matters related to psychological health and psychosocial risks);
- gain an understanding of the nature of the operations of the business or undertaking and the psychosocial hazards associated with those operations to ensure the PCBU has and uses appropriate resources and processes to eliminate or minimise risks from psychosocial hazards;
- ensure the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information;
- verify the provision and use of these resources and processes.

Workers

Workers share a duty with PCBUs with respect to work health and safety.

Under the WHS Act, workers have a duty to:

- take reasonable care for their own health and safety, including psychological health;
- take reasonable care that their actions do not adversely affect the health (including psychological health) and safety of other persons;

• comply with the PCBU's reasonable instructions and procedures.

Resources

There are numerous useful resources publicly available to assist with the understanding and management of psychosocial hazards, including:

- Managing the risk of psychosocial hazards at work - Code of Practice (Qld)
- Managing psychosocial hazards at work – Code of Practice (Safe Work Australia)
- Psychosocial hazards (Safe Work Australia)
- Psychological health for small business (Qld)

Legal advice and representation for work health and safety matters

There are numerous duties and obligations imposed by the WHS Act on persons at a workplace. It is important to take a proactive approach towards health and safety to ensure compliance with the WHS Act, the WHS Regulation and applicable codes, as this may assist in preventing a safety incident or minimising the risk of prosecution if an incident occurs.

Prosecutions for breaches of WHS duties are criminal proceedings, and available penalties include significant fines and, in some cases, imprisonment.

If a WHS incident occurs or a prosecution is commenced under the WHS Act, obtaining advice and representation from experienced WHS lawyers with expertise in criminal defence is imperative.

We have strong technical knowledge of the health and safety duties and an intimate understanding of criminal procedure, enabling us to provide clear and practical advice and robust representation.

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