

DUTY OF CARE FAQS

LEGAL REQUIREMENTS FOR WORKER'S PSYCHOLOGICAL HEALTH



This factsheet is to be used in conjunction with resources located on Deakin's Staff Intranet: www.deakin.edu.au/hr/ohs/mental-health/index.php

1. What does 'duty of care' mean?

Everyone in the workplace has the responsibility to take all practical and reasonable steps- 'duty of care -' to ensure that they are protecting the health and safety of both themselves and their work colleagues. The OHS Act is more specific about the responsibilities of different groups of people in the workplace.



As a manager you have a number of responsibilities to create a psychologically healthy workplace.

2. What is my duty of care in managing mental health in the workplace?

As a manager, you have considerable influence over creating a safe and healthy work environment and a positive workplace culture. You also have an obligation to take the appropriate steps to minimise health and safety risks in the workplace. The actions that you can take to prevent mental health issues in the workplace form part of your ongoing role as a manager:

- Demonstrate that you take mental health seriously
- Show that you value your staff and recognise their performance and achievements
- Discuss issues and grievances with staff - take appropriate action when possible
- Promote collaborative decision making
- Clearly define worker responsibilities and tasks
- Ensure workload is in line with worker capabilities
- Promote work-life balance
- Promote professional development and ensure that staff feel resourced to do their work
- Encourage an environment where people feel valued and heard
- Ensure fairness and respect, creating an environment that demonstrates that bullying and harassment are not tolerated
- Provide opportunities for social interaction amongst staff
- Familiarise yourself with the basics of Mental Health, Deakin's EAP, health and wellbeing programs
- Familiarise yourself with policies and processes to assist staff experiencing mental health issues i.e. reasonable adjustments; return to work

3. What is my duty of care when a staff member discloses that they are experiencing mental health issues?

If a staff member discloses a mental health issue, you must respond appropriately. Many managers feel apprehensive about talking to staff about their mental health so do nothing. This often leads to the situation escalating negatively.

You may feel that you are invading the staff member's privacy, overstepping professional boundaries or are simply concerned about how to manage what the staff member discloses.

As a manager, it is not your responsibility to diagnose or counsel a staff member. You do however, have a duty of care to respond to a staff member's disclosure and to work collaboratively with them to put strategies and adjustments in place to enable them to perform their duties effectively in the workplace. If a staff member discloses that they are experiencing mental health issues, it is important that you meet with him/her to discuss. Refer to factsheet: [How can I manage a staff member with a mental health issue?](#) and information about [having an effective conversation](#).



4. As a manager, what is my duty of care when a staff member is displaying symptoms of mental health issues but they have not disclosed that they have or are experiencing any issues?

A staff member is not obliged to disclose their mental health issues. Often they have considered carefully whether they should or should not do so. Some reasons for non-disclosure may be:

- Lack of awareness
 - Fear of being judged and treated differently by colleagues and management
 - Feeling as though it may impact on future promotions or other work opportunities
- Fear of losing their job
 - They feel that their mental health issue has no impact on the work productivity
 - They feel that they are managing their mental health effectively and have adequate supports outside of their workplace to assist them in this management.

The fact that a staff member has not disclosed their mental illness should not prevent managers from acting if they suspect that the staff member is experiencing mental ill health and it is impacting on their work. Non-disclosure may pose barriers in providing both supports and workplace adjustments; however it should not prevent you from proceeding with the workplace adjustments that you can make.

As a manager it is your responsibility in this situation to:

- Assess the situation and implement workplace adjustments that do not require disclosure
- Ask the staff member if they feel they would benefit from any workplace adjustments made and if so what they may be

- Offer the staff member support and information regarding seeking support from the [Employee Assistance Program](#), their [Client Partner in Human Resources](#), their doctor or another external support agency.

As a general rule it is the manager's responsibility to regularly assess their team and environment so they can identify issues and develop solutions that create a more productive/positive environment. A disclosure of a mental illness by a staff member is not necessarily required to do this. Having an open door policy and an approachable and supportive management style will assist in knowing what is occurring amongst staff members and in fostering an environment where staff members may feel more comfortable to disclose issues as they arise.

5. What is my duty of care with regards to privacy?

Mental health is a personal and sensitive issue. Given the stigma surrounding it, confidentiality in the workplace is very important to people who may be experiencing a mental health issue.

As a manager, you may have access to information about a staff member's mental health. It is important that you and your staff are aware of your obligations under the Privacy Act, as well as any privacy and confidentiality policies developed by Deakin.

The Privacy Act 1988 requires you to:

- Only collect information that is relevant to your role
- Inform the staff member why their information is being collected and for what purposes it will be used
- Inform the staff member about who may have access to their information, how and where it may be documented and who you may need to disclose the information to

As a manager, you also have a legal **duty of confidentiality** that protects the staff member from the inappropriate disclosure of personal health information. It is important that you understand that the information or disclosure has been made available to you for a specific purpose. You need to be mindful of, if, how and with whom you share this information.

Creating an atmosphere in which the staff member feels safe and comfortable may help them to feel more open to having a discussion about their mental health/illness. To do this:

- Adopt a calm and professional manner
- Liaise with your [Client Partner in Human Resources](#) and seek guidance
- Be clear about the confidentiality requirements under OHS and Privacy legislation as well as [University policies](#)
- Inform the staff member that their information and what you discuss with respect to their health will remain confidential. Should disclosure be needed, you should inform the staff member as to whom the disclosure will be made, and for what purpose.

6. Is there ever a time when I can breach confidentiality?

If there is a belief that the staff member poses a health and safety concern to themselves or others in the workplace, you have a duty of care to respond and take action to prevent and/or minimise any risk. Action is about safety and not relationship and engagement.

The duty of care to ensure the health and safety of the staff member themselves, or others in the workplace, supersedes any duty of confidentiality. In situations where you will disclose information to a third party it is often still possible to be open and transparent about the process. You should still inform the staff member that you will be disclosing their information to a third party and explain the reasons why.

For example, if a staff member has made serious threats to harm themselves and others, it is appropriate to make contact with and disclose this information to security/police, [Crisis Assessment Team](#) or another health professional, and/or a family member or friend.

7. What is my duty of care regarding disclosure to other staff within the team?

Some managers may believe that if a staff member has disclosed that they have a mental health issue, they are comfortable for this information to be shared with others. This is often not the case and it is important to discuss with the staff member what information they are comfortable sharing. Be mindful that even if the staff member has agreed to the disclosure to colleagues, the purpose of the disclosure should be carefully considered. More often than not a manager can discuss details about the staff member relevant to their workplace or role without disclosing that they have a mental illness.



If disclosure of a mental illness is required and the staff member has agreed to it, discuss the reasons for particular adjustments in a positive and supportive manner, and share this information with other team members if required.

8. As a manager, do I have a duty of care to explore reasonable adjustments with a staff member experiencing mental health issues?

It is part of your role as a manager to explore solutions within the work environment that enable the staff member to remain a productive member of the workforce. Under Anti-Discrimination and Equal Opportunity law as well as OHS legislation, you have a duty of care to explore reasonable adjustments for a staff member experiencing mental ill health, so that they can continue to perform their role to the best of their ability.

You also have a duty of care to investigate, and eliminate where possible, any risks within the staff member's role or workplace environment that are contributing to their mental health issues.

Some general questions that a manager can ask of a staff member, after disclosure, which may assist in exploring the adjustments that may be needed are:

- Do you require any changes or adjustments to you workplace to assist you to safely perform in your role?
- Do I need to be aware of any triggers in the workplace that are impacting your ability to perform your tasks?
- Are you currently taking any medication that may impact your ability to undertake tasks?
- Can you think of any circumstances where your colleagues may need to know about your mental ill health in order to assist you? If so, what information are you comfortable disclosing to them?

The most successful workplace adjustments are done in collaboration. Everyone's experience of mental ill health is different and so may require different adjustments. It is essential that the staff member has input into what the adjustments are and what plan will be put in place.

Discuss the options available with the staff member. These may include flexible work hours; regular rest breaks; changing work tasks, demands or timeframes; working from home or part time; change time off for appointments etc.

Ask the staff member for their proposals to resolve the issues.

Your duty of care does not end with meeting with the staff member to decide and plan any reasonable adjustments. You need to follow up with the staff member and review any plans or adjustments made, to ensure that these adjustments remain appropriate, and that sufficient resources and supports remain available.

You also have a duty of care to a staff member who has not disclosed any issues, but whom you suspect is experiencing mental health issues that are impacting on their work. Non-disclosure may limit the adjustments you are able to make; however it should not prevent you from proceeding with the workplace adjustments that you can make.

In summary, as a manager, you have a duty of care to:

- Assess the situation and implement workplace adjustments that do not require disclosure
- Ask the staff member if they feel they would benefit from any workplace adjustments, and if so what they may be
- Offer the staff member support and information regarding seeking support from the workplace EAP, HR, GP or another external support agency



Returning a staff member to work

As a manager, you have a duty of care to accommodate a staff member who is returning to work after extended leave due to mental illness. It is important that you talk with the staff member and/or their Return to Work Coordinator to ascertain what reasonable adjustments are needed, so that the transition back to work is successful. When considering the return to work process, you should explore the following with the staff member:

- Exploring what assistance the organisation can provide
- Explain the return to work process to the staff member
- Discuss reasonable adjustments
- Discuss any work based issues that would assist the staff member to feel more confident about their return
- Reassure staff member about practical issues such as job security, and make them aware of personal leave and disability policies.



For more information on supporting a staff member with a mental health issue, visit: <http://www.deakin.edu.au/hr/ohs/mental-health/index.php>