

There is little doubt that recognition of the importance of mental health in the workplace has significantly increased in recent times. This is reflected in the recent introduction of an express requirement to address “psychosocial hazards” (that create risks to workers’ mental health) in work health and safety legislation and codes of practice across a number of Australian jurisdictions.

Firstly, in May 2021, New South Wales introduced a code of practice for managing psychosocial hazards at work.

Then, in August 2022, the model work health and safety (WHS) laws (on which all other states’ and territories’ laws are based, with the exception of Victoria) were amended, with new regulations defining what is a “psychosocial hazard” and setting out how they should be managed. Safe Work Australia also published an accompanying model code of practice for persons conducting a business or undertaking (PCBUs).

In the same month, Western Australia (WA) introduced its own code of practice for psychosocial hazards in the workplace and, in the following month, Victoria proposed to amend its occupational health and safety regulations to require employers, so far as is reasonably practicable, to identify psychosocial hazards and eliminate or reduce the associated risks.

Queensland has followed suit, with its own code of practice and new laws requiring PCBUs to deal with psychosocial risks through the risk management provisions of the Queensland Work Health and Safety Regulations 2011. The Northern Territory has also just amended its WHS regulations to mirror the national model clauses and is in the process of adopting the national model code of practice.

One thing is consistent from reviewing the new laws and codes referred to above. Firstly, in dealing with psychosocial hazards, PCBUs are expected to use the same risk assessment and hierarchy-of-controls approach as with any other type of hazard. Secondly, the range of things that can qualify as a “psychosocial hazard” at work is extremely broad, and, in some cases, potentially ambiguous.

While some examples given are fairly clear (such as bullying and sexual harassment), the codes of practice all indicate that psychosocial hazards can encompass everything from vicarious trauma to fatigue, from environmental conditions to workload.

One example that crops up in all codes of practice is “poor organisational justice,” described (in the WA version) as “unfairness, inconsistency, bias or lack of transparency in the way procedures are implemented, decisions are made, or workers are treated.”

Some of the examples given in the WA code of practice of poor organisational justice are workplaces where there is a real or perceived inconsistency in the application of organisational policies and procedures, unfairness in the allocation of resources, or bias in the approval of worker entitlements, such as annual leave. The Queensland code of practice also includes impartiality, favouritism and nepotism, and workers or managers believing that rules do not apply to them.

While this might all seem valid at first glance, it also raises the question – if a worker believes they have been dealt with unfairly at work, does this constitute a risk to their mental health? And, if so, how is a PCBU meant to mitigate against this?

Clearly, perceptions of fairness, bias and transparency can be somewhat subjective and may differ between individuals. Could this potentially allow a worker to argue that their mental health has been put at risk every time there is a decision they don’t agree with, a procedure they are not fond of, or when they object to the way they have been treated by a manager?

Hopefully this is not the case – in its e-newsletter announcing the pending commencement of the new code of practice, Workplace Health and Safety Queensland (WHSQ) has stated “Poor organisational justice can create a risk when exposure is prolonged, frequent or severe.” So, it may be that the intent behind the new requirements related to psychosocial hazards is to cover workplaces where organisational injustice is at the high end of the scale, or systemic and ingrained, rather than every single example of perceived injustice. However, how the codes of practice and new requirements will be applied in practice remains to be seen.

WHSQ goes on to say in its e-newsletter that poor organisational justice can include “a lack of procedural fairness (fair processes to reach decisions), informational fairness (keeping relevant people informed) or interpersonal fairness (treating others with respect and dignity)”

Clearly, if poor organisational justice is an inherent part of a workplace’s culture and is commonly experienced by workers over an extended period of time, this could have an impact on the mental health of some of those workers. And, as the Queensland code of practice rightly points out, a workplace where there is a systemic lack of organisational justice may result in additional psychosocial hazards emerging, such as internal violence and aggression between co-workers.

So, what can businesses do to address the potential risks created by poor organisational justice? The WA code of practice recommends that PCBUs take measures to ensure:

- Policies and procedures are applied consistently and fairly
- Meaningful work is distributed fairly
- Decisions about work-related entitlements and opportunities are transparent and communicated

It may be possible that including “poor organisational justice” as a psychosocial hazard that creates a risk to workers’ health and safety could open the door to more issues. Given what constitutes “justice” in any given situation may depend on the perspective of the individual worker involved, it could be argued that identifying poor organisational justice as a psychosocial hazard could leave PCBUs inundated with complaints, with every decision made and every procedure implemented scrutinised for its potential impact on workers’ mental health. However, by the same token, for those in workplaces where policies are regularly applied inconsistently, favouritism is the norm, or where management decisions are arbitrary and not open to question, these new requirements may be seen as a significant step forward in addressing risks to workers’ wellbeing.

One thing is clear – with the growing focus on psychosocial hazards in the workplace, the development and maintenance of a positive workplace culture where workers feel supported and safe is going to be a crucial matter for employers going forward in ensuring risks to mental health (including poor organisational justice) are properly managed.

If you want to know more on how these risks can be addressed as part of healthy workplace culture, we would be happy to provide further advice on this issue.

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