

National Human Rights Consultation Reference No: AGWW-7R59RG

A submission by Kimball Thurlow, Tarragindi Qld, April 2009

As the National Human Rights Consultation understands, the situation of mental health in the workplace can be quite a complex one.

As an employer, having had recent experience with an employee with an alleged mental illness, I can speak with some empathy, and also some awareness. I might also add that I am one employer who understands the stigma, the difficulties, and the discrimination associated with mental illness. My mother was diagnosed with a mental illness in 1958, when I was 13. It was not until the early 1990's, when she was in her 70's, that anyone in the medical profession was able to explain to her family, things like manic depression. That is how far we have come.

In my recent experience, and in my capacity as an employer, I have been unable to seek professional assistance in handling the mentally ill employee, nor have I been able to speak to, or obtain information from, the person's medical practitioner or case managers. This is due to the accepted view and application of patient/doctor privacy.

Currently, the circumstance of an employer employing a mentally ill person is filled with uncertainty, and glaring situational omissions.

These uncertainties and omissions will become clear, as I outline how they can be addressed by two actions.

1. An affirmative action by the person's case manager or medical practitioner. Is it not the responsibility of these people to assist the patient in finding meaningful work in the community? In which case, there needs to be some requirement that the situation of the employee's condition are explained to the employer, so that certain adjustments are at least investigated, even if not pursued. There should be an ongoing consultation between the case manager and the employer and employee, to discuss issues as they arise. The case manager will be of great assistance in helping the employee understand the realities of some job or remuneration adjustments.
2. Affirmative action would also call for transparency in the job application process. Currently for understandable reason, the applicant for a job will actually hide his/her mental illness. This serves no long term good for the applicant, and neither for the employer. A national register administered by a government appointed body such as the Australian Human Rights Commission, would make it far easier for an employer to realize what he may be dealing with, and to make an appropriate (instead of a misguided or misled) decision on offering employment, or perhaps adjust the job description to suit, in consultation with the case manager.

It is certainly time for affirmative action to be taken in these cases, but it must be fully supported by the medical fraternity, who unfortunately in my case, would *appear* to be quite lethargic about their moral

or ethical responsibilities. Currently, the employer is often placed squarely in the frame so to speak, because for whatever reason, the true state of the employee's affairs may be deliberately withheld. The employer then finds himself assailed by accusations of discrimination, which could have been avoided by preparation and careful handling.

Finally, in relation to cases like this, where employer and employee part company with some degree of recrimination, it is imperative, in serving our duty of care to the work place, and the wider community, to be able ascertain the nature of the employee's condition, to illustrate if he/she is likely to:

- (a) Become further aggravated by any disability complaints process, exacerbating his/her illness
- (b) Pose a threat to ex-fellow employees or others?

The situation of employers and employees becoming involved in recriminations where no one wins, is harmful to the workplace, harmful to the parties, and is a waste of money and community resources.

This submission was written by Kimball Thurlow, Tarragindi Qld, Australia, for the National Human Rights Consultation 2009.