



Mental health in the workplace

An employer's issue

Managing workplace health and safety has run the gamut from providing ergonomic chairs and PPE to ensuring appropriate evacuation pathways are clearly marked. Emerging trends from WorkSafe New Zealand, however, indicate that the mental wellbeing of staff should fall under an employer's obligation to provide a 'safe' workplace.

Under the Health and Safety at Work Act 2015, an employer is required to ensure, as far as reasonably practicable, the health and safety of their workers. The legislation defines 'health' as both physical and mental health. Historically, most employers have understood this to mean that asking for unrealistic workloads to be met or using bullying tactics on their staff could result in a breach of the Act or a successful personal grievance claim. It was generally accepted that the management of the mental wellbeing of staff outside the employer-employee relationship was assumed reasonably out of the employer's responsibility or control.

It appears the sentiment regarding this previously held assumption is changing rapidly in both New Zealand and Australia. Workplace health and safety agencies from both countries have stepped in and issued notices to employers who have failed to manage their employees' general mental wellbeing, particularly where action could have been taken to prevent mental harm or distress.

Recent New Zealand example

An example of this new emphasis is WorkSafe issuing an improvement notice to Te Aroha College in late 2021 for failing to prevent 'psychosocial risk' to its staff. Interestingly, this situation arose from rumours circulating about two teachers falsifying permission slips that the school did not take steps to stamp out. The rumours, that were running unchecked, were seen to cause undue distress to the two teachers involved and WorkSafe intervened. This action came as a surprise as WorkSafe publicly states it does not ordinarily step in to 'individual' circumstances. By intervening and making

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M A C T O D D
L A W Y E R S



'an example' of Te Aroha College, WorkSafe has signalled an increased focus on this area of workplace health.

Australia's health and safety agency, Safe Work Australia, has issued similar warnings. In 2021 it took action against the Wyndham Clinic Pty Ltd. The clinic was prosecuted for failing to provide structures to prevent bullying in the workplace, including employee-employee bullying. In this instance, a senior employee was seen to use profanities and verbal abuse against another employee (including saying other people did not like that person and did not like working with them). Wyndham Clinic was ordered to pay over A\$79,000 in fines and costs for a failure to provide procedures to prevent an employee's mental harm.

These actions from government agencies indicate that employers must be much more proactive to prevent mental distress in the workplace. In the Te Aroha College situation, the origin of the rumours is unknown, and it was never alleged that the rumours were employer led. The implications are that WorkSafe expects an employer to take steps to proactively manage employee-employee bullying and/or risks to mental wellbeing.

In most workplaces, particularly large organisations, employee-employee bullying may be hard to identify. For example, in workplaces such as construction sites, there is a largely accepted behaviour of workplace 'banter' that an employer may have always deemed appropriate or, at the very least, considered relatively 'good natured'. In large organisations where employees are spread over many sites there may be no oversight of employee-employee interactions.

So, what is an employer to do?

Employer steps

A first step for all employers is to ensure there is a suitable and up-to-date workplace mental wellbeing policy. This policy should be very clear on what steps can be

taken by an employee who is feeling unduly stressed in the workplace – for all manner of reasons. This should extend beyond typical workplace bullying and into areas such as workload management, limiting and preventing exposure to aggressive or abusive clients/customers, and to management of uncertain situations.

The policy should also include the steps an employer will take to provide support and care to their employee when stress is caused. The policy should be provided to all employees, and employers should take steps to frequently remind them of the availability of support pathways.

Every workplace is unique in its health and safety needs.

Every workplace is unique in its health and safety needs. The Act states that an employer should take steps that are 'reasonably practicable', so it's probably safe to assume you aren't expected to tuck your staff member into bed at night (in fact, please don't!), but it is clear that more steps need to be taken. For some employers, enhancing how you take care of employees' mental wellbeing could include:

1. Reviewing your workplace policy
2. Providing your employees with multiple avenues of support and communication (not just through their employer or manager)
3. Routine staff meetings to raise mental health conversations
4. Activities in your workplace to help employees manage stress, for example, meditation workshops
5. Having conversations with individual staff members who appear sad or withdrawn to identify any workplace triggers
6. Frequently reminding your staff of the clear steps they can take to communicate mental distress to their employer, senior management or external support providers
7. Discussing how you as the employer or senior manager propose dealing with upcoming uncertainty, such as Covid business continuity planning
8. Anonymously surveying your staff to monitor wellbeing and 'pressure points', and
9. Regularly auditing your own workplace to check for compliance in workplace health and safety procedures and reassurance that existing systems are working.

Managing the health and safety of employees has always been a changing landscape. It is now clear, however, that there is a shift towards enhancing the policies and procedures that employers must have in place to protect the mental wellbeing of their staff. Given the uncertainty of working in a pandemic-related environment, employee wellbeing is already fragile. Taking the time now to revamp internal policies to help overall staff health is a worthwhile exercise not only to protect the mental wellbeing of your valuable staff, but also as a pre-emptive step for enhanced government-driven focus on this topic. +

Co-ownership arrangements

Could be a good option to get on the property ladder

Getting on the first rung of the property ladder is becoming harder than ever to achieve. The reasons why are well known – sky-rocketing house prices, higher rents and costs of living, tight lending restrictions and a shortage of housing stock. This perfect storm presents a living nightmare for first home buyers. Is it time for prospective homeowners to give up on the Kiwi dream of home ownership? If not, there are other options.

The Kiwi dream

There are significant social and economic benefits to communities from the security that comes with having an established place to live. It brings freedom from the uncertainty and stresses of renting coupled with anxiety as house prices continue to rise. These benefits make the housing dream worth chasing and have driven private companies, the government and charities to provide innovative solutions to help Kiwis (with a variety of incomes and house price brackets) into home ownership. Necessity is, after all, the mother of invention.

Co-ownership

Co-ownership (or shared ownership) is a practical tool to get on the property ladder: by 'shared' we don't mean pooling funds and cramming into one house with several other families (or your closest friends) bunk-bed style.

Co-ownership means buying the percentage of a property that you can afford now, with a silent partner (either a company, the government or a charity) providing the balance. Together you 'co-own' the property in those shares. The home is yours to enjoy. You are free to paint the walls, change the carpet, hammer in picture hooks and plant a garden. In return, you pay the rates and insurance, and maintain the property.

You pay a fee (or interest) for the co-owner's share, and in time (either by an increase in the property's value or because your financial position has improved) you can buy out your co-owner. Boom – full ownership!

Filling the deposit gap

For many prospective buyers, their inability to save a large enough deposit is the main barrier to getting a loan from a bank. Most are quite capable of servicing a mortgage but cannot save for the required (and ever-increasing) deposit amount because life gets in the way.

The gap between the deposit saved and the deposit required is just too wide for many. This is where co-ownership initiatives help people who don't fit mainstream mortgage criteria.

Buying a first home provides Kiwis (who have been in KiwiSaver for at least three years) a 'single use' key to unlock those contributions which can assist towards 5% of a house deposit. If you have 5% of a deposit, you can use



the co-owner's contribution to top up the deposit required for regular retail lending – without having to resort to a second-tier lender.

If the worst happens – what next?

As well as the upsides of owning property, what happens if the property market dips, your personal financial situation doesn't improve or if your relationship breaks up?

If things really go belly-up, the house can be sold, the mortgage repaid and your co-owner shares in the loss (or the gain) in the percentage ratio that they contributed at the outset. Or there may be other options; always talk with your co-owner as they may be able to offer alternatives.

Some co-ownership options

New Zealand Housing Foundation: Help from this charity is limited to people buying new houses that are located only in New Zealand Housing Foundation developments. The income cap is \$95,000. Find out more at: www.nzhf.org/affordable-home-ownership/

Kāinga Ora: The government's First Home Partner programme is also for new houses only. You must be able to contribute a minimum 5% deposit and the total household income cap is \$130,000. It will contribute a maximum of 25% of the house value or \$200,000. For more information on this, go to www.kaingaora.govt.nz and search for First Home Partner.

YouOwn: This privately funded company operates nationwide: it manages investment from not-for-profit entities to support co-ownership in the community. It allows co-owners to buy existing properties, as well as new ones. There is no income cap or house value limit. Eligibility criteria includes a 5% deposit, minimum household income of \$110,000, and no or low debt. You pay 4.95% per annum on YouOwn's share and can buy them out after five years. Go here to find out more: www.youown.co.nz

And there are other organisations and private co-ownership schemes and arrangements that you could investigate.

Conclusion

In high-price areas such as Auckland (actually, almost anywhere in New Zealand now) and without access to a 'bank of Mum and Dad' to solve the deposit gap, a co-ownership arrangement may be the best opportunity for prospective buyers wanting to escape private rentals and have a place to call their own.

Each scheme has different terms, eligibility criteria, restrictions and limitations. Come and talk to us to ensure a full understanding of the co-ownership journey.

So, check out the co-ownership possibilities and keep the dream alive. It may be you, or someone you know, who could use a helping hand onto the property ladder right now. +

Checking your home is accurately insured

Regularly review the sum insured

Recent sharp increases in building materials costs due to Covid shortages have affected the cost of a possible rebuild, or repair, of your home. It is, therefore, wise to have your home properly insured. Although most commercial property owners must obtain an insurance valuation at least every three years, there is seldom any requirement on homeowners to do this.

With most house insurance policies, it's up to the homeowner to set the sum insured. If your sum insured is too low, you may not be able to repair or rebuild your home to the same size and quality in the event of damage or loss. If your sum insured is too high, you are paying too much for your insurance as most insurers will only reimburse policyholders for the actual cost of the loss they have suffered.

Tips for determining the sum insured

Professional valuation: If you want accurate and up-to-date rebuild figures, obtain an insurance valuation from a property valuer or quantity surveyor. The sum should be based on current building costs, not market value.

Online calculator: Using an online calculator (Cordell Sum Sure, for example) can be useful but this comes with a word of warning. It's an estimate; it is not as accurate



as a professional valuation. We heard a recent example where a professional valuation produced a figure almost 30% higher than using an online calculator.

Whichever method you use, the valuation should:

- + Not include the cost of the land, just the property/ structures built on it
- + Allow for current building standards to be implemented
- + Factor in structural improvements such as sheds, pergolas and fencing
- + Include the cost of removing debris, and
- + Include GST.

It's up to you to check your sum insured is accurate and kept current. You should review the sum insured each year to make sure it's still appropriate for your home.

In the unfortunate event that you experience any loss and have difficulty reaching agreement with your insurer over the value of the loss, please contact us for advice on your legal options. +

Helping your family before you pass away



Get your family details noted now

When someone in your family dies, there are a myriad of things to organise – some of which must be done almost immediately.

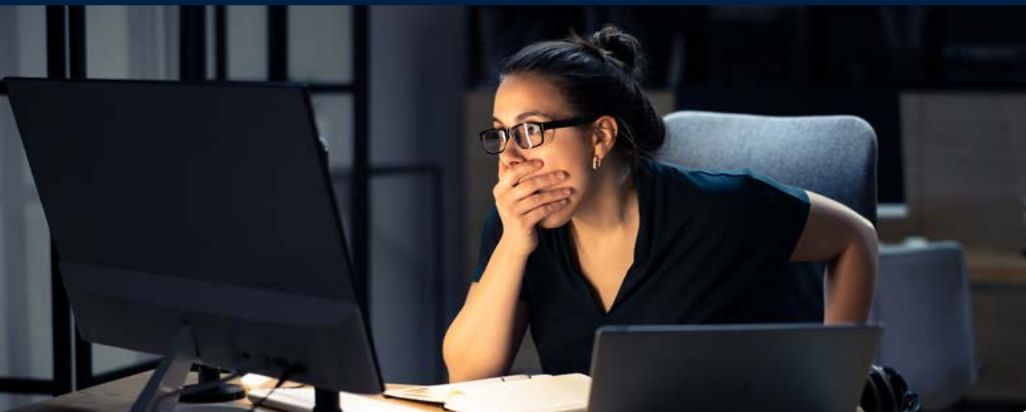
One of those tasks is for the death to be registered within three working days of the deceased's burial or cremation. The funeral director usually organises this. If, however, there is no formal farewell, your family will need to organise this themselves.

Whichever way the death registration is organised, a family needs a great deal of information at its fingertips. Unless one of your family members has an elephantine memory, it may be useful if the required information is documented well before you die! You are more likely to know family details than anyone else. It will also save time after your death when everyone is shocked and it's easy to forget the most straightforward things.

The Notification of Death for Registration form requires this information:

- + **The deceased:** Their full name (both at birth and when they died – they could be different); sex; date and place of birth; age, date and place of death; usual home address and their occupation. If not born in New Zealand; how many years have they lived here; and some ethnicity questions
- + **Living children:** Ages of each living son and daughter
- + **Parents:** Their parents' full names (at birth and when they died); and occupations
- + **Relationships:** Spouse/partner full name, sex and age when the relationship was formalised; relationship details such as married, civil union, de facto, separated, divorced, etc; and age of the deceased at the time of a civil union/marriage. There is space for up to four relationships to be recorded, and
- + **Other:** There are boxes to tick if the deceased was a marriage/civil union celebrant, Justice of the Peace and if they held an honour or award.

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Notifications of privacy breaches increase significantly

Check systems are in place

Notifications for a privacy breach have increased nearly four-fold since the new Privacy Act 2019 came into force on 1 December 2020. In the period 1 December 2020 to 30 November 2021, 750 privacy breach notifications were received by the Office of the Privacy Commissioner (OPC). One-third of those cases met the threshold for serious harm.

The new legislation makes it mandatory to notify the OPC of privacy breaches that have caused, or have the potential to cause, serious harm to people.

Failure to report a serious breach can result in a Compliance Notice being issued, public notification of the breach and/or a fine of up to \$10,000.

Privacy breaches can cause real harm to people. In the serious breach category in the above 12-month period, 36% of serious breaches involved emotional harm, 14% reputational harm and 13% identity theft. Other harms were classified as financial harm, threats of harm and so on.

Take great care with personal information

Human error causes the majority of reported serious breaches. Human error includes accidental disclosure of sensitive personal information, data entry errors, confidentiality breaches,

redaction errors, postal and courier error.

Email error accounts for over a quarter of all reported serious privacy breaches. The OPC recommends any organisation should have good systems and processes for electronic communications. Emailers should:

- + Use the BCC option when sending to multiple recipients
- + Double-check attachments are correct, and
- + Have a send delay.

Senders should always check their email draft very carefully when including any sort of personal information. It is also useful to ask a colleague to do a fresh-pair-of-eyes review of any draft email that includes personal information.

Privacy breaches occur in the public and private sectors, as well as in not-for-profits; all three sectors store some form of personal information such as health care and social assistance data.

To read more about privacy breaches in the first 12 months of the new legislation, go to the OPC's website, www.privacy.org.nz, and search for privacy breach reporting.

NotifyUs

If you want to either report a serious privacy breach or are unsure if your potential breach meets the threshold for notifying the OPC, use the anonymous self-assessment tool to help you decide. Go to www.privacy.org.nz and click on the NotifyUs button. +

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Postscript

New holidays legislation in the pipeline

The complexities of calculating holiday pay and other leave provisions under the current Holidays Act 2003 should be a thing of the past when new legislation is expected to be introduced to Parliament mid-year.

A government-appointed taskforce has made recommendations to simplify provisions and to provide a commonsense application in the workplace. It is proposed, for example, to allow employees to take annual leave on a pro rata basis during their first year of employment rather than having to wait a full year before being entitled to paid annual leave.

The advent of this new legislation will, we hope, bring much relief to not only employees but also payroll staff who have had to grapple with the anomalies of the current Act. +



Minimum wage increased from 1 April

In February, the government announced that from 1 April 2022 the minimum wage would rise to \$21.20/per hour.

It also announced that the starting-out and training minimum wage rate would increase from \$16.00 to \$16.96/hour from 1 April.

All employers should ensure their records are up-to-date and that they are paying their employees the correct hourly rate. +

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Helping your family before you pass away

There are also boxes about the cause of death, date and place of cremation, etc which cannot, of course, be completed until after a funeral.

Medical certificate of death

Different from the death certificate, this notes the cause of death and is provided by the deceased's doctor or hospital doctor. The estate's lawyer needs a copy of this document.

Although it may seem morbid, making sure these details are recorded will help your family as they come to terms with your death.

To get more information, go to www.govt.nz and search for registering a death. +

M A C T O D D L A W Y E R S

Directors

Bryony Shackell
Clark Pirie
Jayne Macdonald

Consultants

Alan Macalister
Richard Cunliffe

Senior Associates

Scott Donaldson
Shahana Saud

Professional Staff

Alice Milne
Anna Gillooly
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Associates

Duncan Anderson
Harriet Jopp
Tanya Surrey

Oliver Jolly
Sonalia Tamia

Notaries Public

Alan Macalister
Jayne Macdonald

Legal Executives

Melissa Eaton
Jo Luxon-Davies

Office Manager

Ros Pirie

Queenstown Office

11-17 Church Street, Queenstown 9300
PO Box 653, Queenstown 9348
P +64 3 441 0125, F +64 3 442 8116
queenstown@mactodd.co.nz

Cromwell office

Unit 1H Traders Lane, Cromwell
PO Box 533
Cromwell 9342
P +64 3 445 0065, F +64 3 442 8116
cromwell@mactodd.co.nz