

FEDERAL COURT ORDERS FRIENDLY REMINDER FOR EMPLOYERS MANAGING EMPLOYEES WITH MENTAL DISABILITIES

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The Federal Circuit Court recently determined that an employee terminated over performance and conduct issues, has failed to establish a connection with his mental disability or that his employer took adverse action on the basis of his bullying complaints. The case is a reminder for employers to exercise caution when managing employees with mental illness.

IN ISSUE

Whether an employee's mental illness was a substantive and operative factor as part of his termination

THE BACKGROUND

Mr Batista was employed by Wells Fargo International Finance (Australia) Pty Ltd (Wells Fargo) as a stock checker in 2016. He was terminated in March 2018 following a workplace investigation, which found he repeatedly failed to comply with work procedures and directions, including his failure to follow directions in respect of attending planning days. It also found he had poor attitude and behaviour towards his supervisors.

Mr Batista made an application alleging that the investigation and his dismissal constituted unlawful adverse action and discriminatory action in breach of s340 and s351 of the *Fair Work Act 2009* (Cth).

Mr Batista alleged that the investigation and subsequent dismissal was taken against him because he exercised the following workplace rights:

1. he contacted his line manager in September 2016 claiming to have a meltdown before taking leave and providing it with a medical certificate stating that he had a “medical condition”;
2. he complained to Wells Fargo about alleged bullying and commenced proceedings in the Fair Work Commission seeking an order to stop bullying a month prior to the termination; and
3. he repeated allegations of bullying and harassment to his Employee Relations Manager.

Mr Batista also claimed that adverse action was taken against him because he had a mental disability. To that end, he alleged that Wells Fargo understood he had mental health issues.

Mr Batista’s application sought reinstatement, compensation and damages.

THE DECISION AT TRIAL

The Federal Circuit Court dismissed Mr Batista’s claims. While satisfied that adverse action was taken against Mr Batista in the form of the disciplinary process and his dismissal, it accepted that the reasons were lawful. His performance and conduct were the substantial and operative reasons for the decision.

In reaching this determination, they also said that the proximity between his complaints, his anti-bullying application and the adverse action did not undermine the company’s evidence that it based its decision purely on performance and conduct concerns.

The Judge also refused to accept that any inability to perform his duties or attend work on time amounted to a manifestation of his disability or ought to imply as such to his supervisors. Though the Court accepted Mr Batista had anxiety and depression, and therefore, suffered from a disability, there was no evidence he ever told of his condition. Judge Kendall also noted that given his attendance on planning days was an inherent requirement of his role, it said that if adverse action was taken in this regard, the discrimination exemption would have exempted it from liability.

IMPLICATIONS FOR YOU

In this particular case, Wells Fargo was unaware of the employee’s mental health illness. This matter demonstrates that employers ought not to assume an employee does not have a mental health illness. Indicators such as changes to the employee’s behaviour and/or difficulties with meeting required standards of performance may be enough to put employers on notice that an employee has an underlying mental health issue.

It is critical for employers to understand their obligations when managing employees who have related or underlying mental health issues, including:

- exercising caution;
- ensuring the employee’s disability is not a reason for the taking of any adverse action (such as a demotion, performance management or termination) against the employee;
- considering whether reasonable adjustments are required to enable an employee with a disability to perform their role; and
- considering an employer’s occupation health and safety obligations.

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