

Worker's burnout may be employer's responsibility

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Taking care of employees' mental health is not merely idle chatter or a formal work safety obligation. An employer that fails to pay attention to staff overload issues may face some real legal consequences. This article examines the legal implications of a worker being diagnosed with burnout syndrome and offers a practical overview of how the employer could respond.

Burnout syndrome

In its 2018 survey the National Labour Office stated that burnout syndrome is a common health disorder caused by stress. Psychological hazards, such as time constraints, invariable pace of work, long working hours, and stress, are recognised as crucial workplace factors by occupational health and safety experts. This is also confirmed by recent surveys, with 43% of workers surveyed in 2023 experiencing signs of burnout.

Under paragraph 5.15 of the Cabinet of Ministers' Rule No. 908, *Procedures for Investigating and Recording Occupational Diseases*, burnout syndrome is one of the occupational diseases caused by overload. This means that burnout syndrome should be addressed and remedied as seriously as any other injury at work. The occupational health and safety legislation applies, making the employer liable to eliminate occupational hazards.

If a worker has experienced signs of burnout syndrome in the workplace, the employer should expect to be asked to eliminate the working conditions and improve the processes that triggered the onset of burnout symptoms. The National Labour Office may, either on its own initiative¹ or at the worker's request, approach the employer about any workplace factors that pose or may pose a health hazard.

If the employer fails to eliminate such risks, then some of the legal consequences might be the worker terminating employment and applying to the National Labour Office, or even to the courts, for compensation under section 1635 of the Civil Code. The worker could also refuse to work,² which is likely to result in idle time caused by the employer, entitling the worker to compensation.

It's important to note that under section 19 of the Occupational Health and Safety Act, if the employer fails to eliminate health hazards (according to the National Labour Office's instructions) and the worker unilaterally terminates employment because of that, the employer is liable to pay compensation equal to the worker's six-month average earnings. The employer may also be fined for breaching the occupational health and safety legislation.

If burnout syndrome is duly diagnosed as occupational disease, the employer is in fact unable to terminate employment with the worker. Although section 101(1)(11) of the Employment Act provides that the employer may terminate employment with a worker who fails to carry out work for more than six months because of temporary incapacity for work, section 109(4) makes a crucial exception: the employer cannot terminate employment if such incapacity for work is caused by occupational disease.

This leads to the conclusion that burnout cases expose the employer to a high legal risk. To take proper care of staff health and prevent burnout, and if necessary be able to put together suitable arguments to defend corporate interests in court, the employer should implement and document a set of measures, for example:

- Assessing workplace risks and improving the workplace (a legal obligation)
- Training workers about mental health in the workplace
- Surveying workers regularly about their wellbeing in the workplace
- Encouraging workers to use their annual leave
- Providing health insurance that includes paid psychotherapist or psychologist advice
- Minimising professional communication outside working hours
- Offering other benefits, such as mental health holidays

Interestingly, while working hours might at first seem to be a merely organisational matter, the aggregated hours scheme is also considered a psychological hazard. We need to emphasise the employer's responsibility in the case of aggregated hours, because this poses a higher risk of the onset of burnout syndrome and the employer has a proportional obligation to provide an even wider range of activities in order to mitigate mental health risks.

In summary, from the standpoint of legal consequences, burnout syndrome is just another occupational disease. Given the increasing public awareness of the significance of mental health and how the working environment affects it, this subject is likely to become even more topical. Employers should focus on prevention, as well as adapting and improving their working conditions, since the legal obstacles to resolving situations caused by worker burnout are huge.

¹ <https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/FB14D52CC90260A9C2258358004FE04C?OpenDocument>

² Section 18(1)(1) of the Occupational Health and Safety Act provides that an employee may refuse to perform work if it poses or may pose a risk to the safety and health of the employee or other persons and if there is no other way to eliminate that risk.