



Mental Health, Burnout and Misconduct

Where empathy ends and accountability begins



DOES THIS SOUND FAMILIAR?

"I'M STRUGGLING"

"I'M GOING THROUGH A DIFFICULT TIME"

"I HAVE ANXIETY"

"I HAVE DEPRESSION"

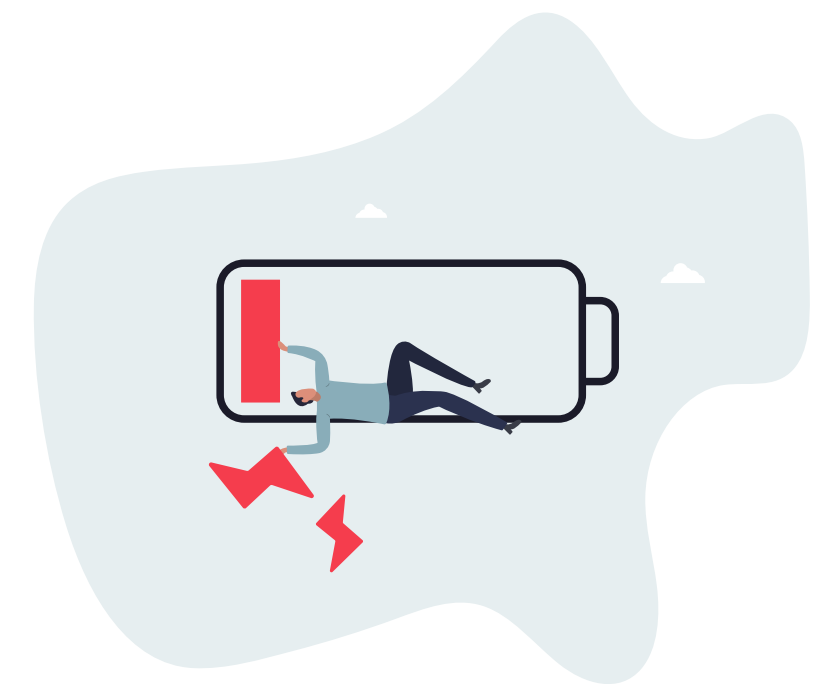
"I CAN'T COPE AT THE MOMENT"

ABIGAIL - I'M BURNT OUT, I JUST COULDN'T COME IN...

Abigail is a high-performing manager who has worked for the Company for 6 years. Over the past 3 months, her attendance has deteriorated where she has taken:

- 8 days of medical leave
- 6 days of emergency leave
- She has arrived more than an hour late to the office multiple times.
- She was absent for 4 days (on different dates) where she simply did not turn up and informed her manager several hours later or sometimes not at all.

Her manager raises concerns about her attendance.



ABIGAIL - I'M BURNT OUT, I JUST COULDN'T COME IN...

Abigail becomes emotional and tells HR:

"I am struggling mentally. I have been suffering from burnout and anxiety. I am barely functioning. I don't think you understand what I'm going through."

HR then offers counselling referral and asks whether any workplace adjustments would help.

Abigail responds:

"I don't want to discuss my personal condition. You need to understand that I have mental health issues. You cannot expect me to behave like a normal employee right now."

ABIGAIL - I'M BURNT OUT, I JUST COULDN'T COME IN...

Her attendance continues to deteriorate.

When questioned by HR, Abigail says:

"I was having a mental health episode. You should not be disciplining me for something I couldn't control."

DANIEL- I'M UNDER STRESS.DON'T TALK TO ME LIKE THAT...

Daniel is a senior employee with 8 years of experience. His department has recently gone through a restructuring where some of his team members were retrenched.

He has been working long hours to take on his team members portfolio and additional responsibilities. He has informed his manager that he is under considerable pressure and stress.

One morning, during a team meeting, his manager questions and challenges him about a missed deadline.



DANIEL- I'M UNDER STRESS.DON'T TALK TO ME LIKE THAT...

Daniel suddenly becomes angry and raises his voice and says:

"You people are completely useless! You keep piling work on me and then blame me when things go wrong!"

He slams his laptop shut and walks out. Later that afternoon, he sends a message to his manager:
"I'm sorry. I'm not myself at the moment. I am struggling with my mental health and I am under a lot of pressure and stress."

DANIEL- I'M UNDER STRESS.DON'T TALK TO ME LIKE THAT...

The manager raises this issue to HR and HR meets with Daniel to discuss the incident. Daniel explains:

"I know I shouldn't have shouted but you need to understand that I am struggling. If you discipline me for this, you're basically punishing someone for having a mental-health problem."

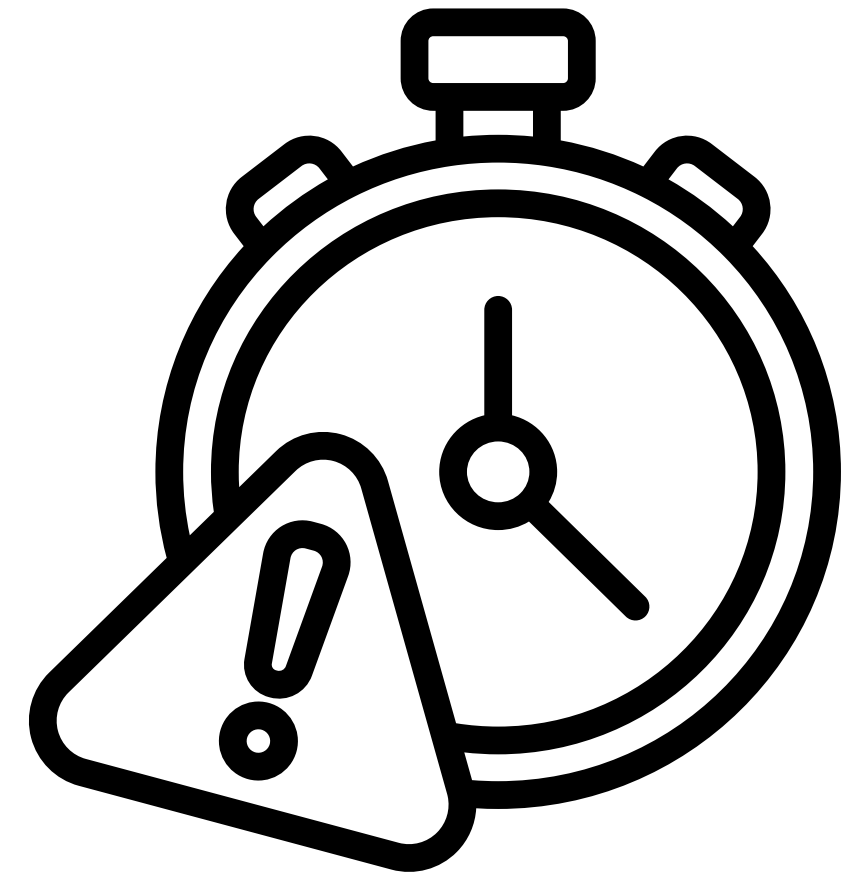
There are also 2 earlier incidents where Daniel was short-tempered with colleagues, although neither resulted in a formal complaint.



IBRAHIM - I'M ON PROBATION BUT I'M STRUGGLING...

Ibrahim joined the Company 3 months ago and is currently on a 6-month probationary period. During his first 2 months, his manager observed several conduct issues:

- He was late for work on 7 occasions, without prior notification.
- On 2 occasions, he failed to inform his manager that he would be late.
- He missed 3 important deadlines despite having been reminded of them.
- He failed to follow a reasonable instruction from his manager and responded, "I'll do it when I have time. You are causing me anxiety."



IBRAHIM - I'M ON PROBATION BUT I'M STRUGGLING...

- During a team meeting, he became frustrated when his manager questioned the delay and said "You're always on my back. I can't work like this. Back off."
- One another occasion, he left the workplace during working hours without informing his manager.

The manager has informally spoken to Ibrahim several times and reminded him of the Company's expectations.



IBRAHIM - I'M ON PROBATION BUT I'M STRUGGLING...

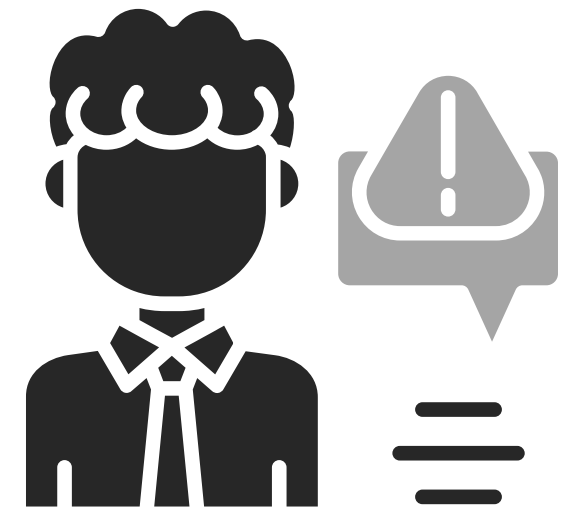
When these issues are raised during the monthly probation review, Ibrahim becomes defensive and tells his manager and HR for the first time that he has been experiencing anxiety and depression. He says:

"I need you to understand that I'm dealing with anxiety and depression. I've been struggling for some time and that's affecting how I cope with work. I don't think it's fair for the Company to keep focusing on my lateness and the way I've reacted when you know that I'm dealing with a mental-health condition."

**3 EMPLOYEES. 3 DIFFERENT SITUATIONS.
ALL RAISED MENTAL HEALTH.**

An employee can be struggling with their mental health and still engage in misconduct.

**So where does empathy end?
And where does accountability begin?**



RECOGNISING THE SIGNS OF POSSIBLE MENTAL HEALTH DIFFICULTIES...

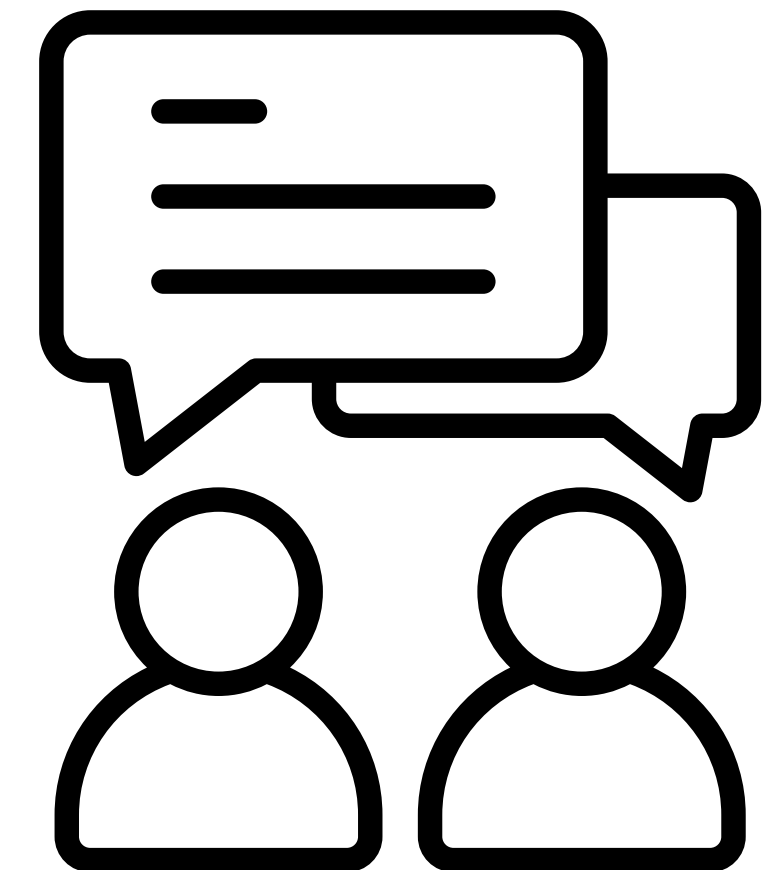
What you may notice...	Possible Workplace Signs...
Attendance & Energy	Frequent or unusual absences, lateness, increased medical leave, appearing constantly exhausted.
Performance & Concentration	Difficulty concentrating, forgetfulness, missed deadlines, increased errors, difficulty making decisions.
Behaviour & Emotions	Irritability, emotional outbursts, withdrawal, unusual sensitivity, conflict with colleagues
Work Patterns	Reduced Engagement, Struggling with Routine Tasks
Communication	Becoming unusually quiet, defensive, overwhelmed or repeatedly saying they cannot cope
Physical & Well-being	Visible fatigue, medical issues, or other recurring health complaints.



A sign is not a diagnosis.
The same behaviour can have many different causes.

WHAT HR/EMPLOYERS CAN DO...

01	OBSERVE	Focus on changes in behaviour or work patterns
02	ASK	Have a supportive, non-judgmental conversation
03	LISTEN	Allow the employee to explain what is happening.
04	SUPPORT	Offer appropriate resources or workplace support (if applicable)
05	RESPOND	Address legitimate workplace issues and expectations appropriately.



WHAT HR/EMPLOYERS SHOULD NOT DO...

01	DIAGNOSE	• "I think you have depression."
02	ASSUME	• "You're behaving this way because you are anxious."
03	LABEL	• "She's mentally unstable."



WHERE DOES EMPATHY END AND ACCOUNTABILITY BEGIN?

What if the employee is genuinely struggling and the misconduct is also genuine?

An employee can genuinely experience anxiety, depression, burnout or any other mental health difficulties and still be responsible for the misconduct.

The challenge is not Empathy OR Accountability.
It is Empathy AND Accountability.



THE LEGAL GREY ZONE

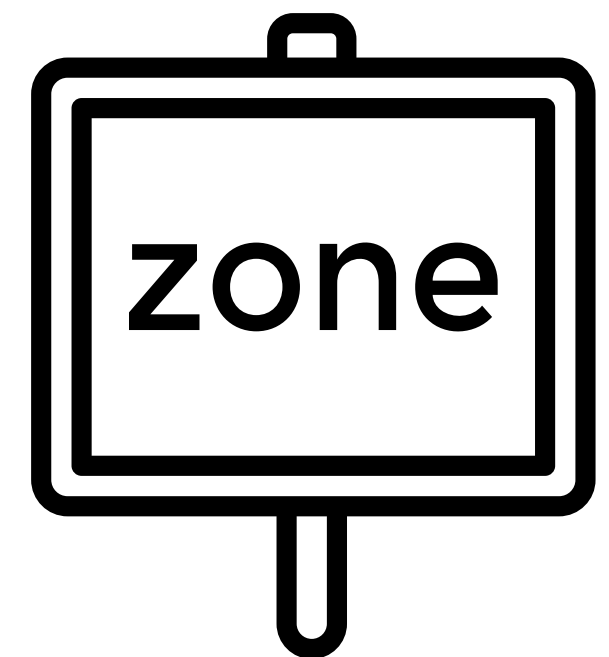
Mental Health may be relevant circumstance in assessing misconduct but it is not automatically a defence to misconduct.

Don't Diagnose - HR Is not the employee's doctor.

Don't Automatically Excuse - A disclosure of mental health issue does not automatically mean rules and expectations do not apply.

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Don't Ignore - If a mental health issue is raised, don't ignore it as it may be relevant to the misconduct at hand.



INSTEAD...

Understand → Support → Set Expectationst
→ Investigate → Decide



THE 10-STEP HR ROADMAP

Step 1 - Recognise - Identify changes in attendance, behaviour, emotional response or work patterns. Don't diagnose.

Step 2 - Ask - Have a private and supportive conversation to determine what is the cause of the changes, conduct or alleged misconduct that took place.

Step 3 - Listen - Allow the employee to explain. If mental health is raised, don't immediately treat it as an excuse or a defense.

Step 4 - Understand/Verify - Where relevant and appropriate, ask for supporting medical information or documentation through the proper process, particularly where the employee says a medical condition is affecting their ability to comply.

THE 10-STEP HR ROADMAP

Step 5 - Support - Offer appropriate support such as counselling, workplace adjustments, communication arrangements if applicable.

Step 6 - Clarify Expectations - Be explicit. Ensure that the employee understands the Company's expectations and that despite the support, there will be consequences should the matter persists.

Step 7 - Document and Monitor - Document what was raised, the support provided, the expectations communication and the subsequent incidents that may have taken place.

THE 10-STEP HR ROADMAP

Step 8 - Investigate the Misconduct - If the conduct continues or it is sufficiently serious: establish the facts, identify the alleged breach, gather evidence to establish the misconduct.

Step 9 - Comply with Due Process - If disciplinary action is warranted, issue a show cause letter, assess the employee's response and the evidence gathered, conduct a Domestic Inquiry where appropriate

Step 10 - Decide & Act - Consider the evidence, mental health circumstances, support offered, the context of the conduct before deciding on the proportionate and appropriate punishment.

CASE SUMMARY

AZIZAH BINTI AHMAD V MALAYAN BANKING BERHAD [2017]

ILRU 0476

AZIZAH BINTI AHMAD V MALAYAN BANKING BERHAD [2017] ILRU 0476

The Claimant, who was the Head of Merchant Portfolio Management at Maybank, was placed on probation and tasked with two key deliverables that showed no meaningful progress.

She then went on continuous medical leave from October 2010 until her termination in March 2011, accumulating 117 days against a 15-day entitlement.

While on leave, she filed a lengthy grievance alleging that she had been overworked, under-resourced, and made a scapegoat, relying on a doctor's referral letter stating she had "developed depression and anxiety panic attack aggravated by phone calls from office."

The Bank issued a letter of non-confirmation at the end of her extended 9-month probation.

AZIZAH BINTI AHMAD V MALAYAN BANKING BERHAD [2017] ILRU 0476

Issues before the Court:

Was the non-confirmation/termination done with just cause or excuse?

Findings:

The termination was with just cause or excuse.

Medical evidence must show work-causation, not just a diagnosis.

“There is nothing mentioned by the doctor that it was caused by the Claimant['s] work burden or being overworked... what happen[ed] to Claimant is not work related as there are many other reasons that can cause depression and anxiety.”

AZIZAH BINTI AHMAD V MALAYAN BANKING BERHAD [2017] ILRU 0476

Take Away

A diagnosis is not causation.

The medical letter in this case confirmed depression/anxiety existed - it did not say the workplace caused it.

HR Practitioners should note: The evidentiary gap the Court flagged (no causal link drawn by the treating doctor) is the same gap that recurs across nearly every Malaysian case in this line.



HAFIZAH BT JUMAT V THE MALAYSIAN GOVERNMENT & ORS [2022] MLJU 2910

The Claimant, over the course of her employment accumulated 393 days of paid sick leave, 143 days recorded as unauthorised absence without leave or permission, and 428 days of sick leave in total after her probation period lapsed, subsequently affected her yearly performance scores.

The Claimant was diagnosed with Bipolar Mood Disorder Type II in 2018 and Schizoaffective Disorder in 2020, both supported by medical reports from the employer's own government hospital, which she attributed her shortcomings to her mental health condition.

The employer terminated her service, citing her unsatisfactory performance, prolonged sick leave, and unapproved absences as rendering her unfit for the job.

HAFIZAH BT JUMAT V THE MALAYSIAN GOVERNMENT & ORS [2022] MLJU 2910

Issues before the Court:

Whether there were valid reasons for her absence.

Findings:

1. Duly consideration by the employer. - The Court held that the Applicant's "main reason" for absence was her mental health condition, and found that the employer had "duly considered" this explanation before terminating her.
2. Employer is the best judge - The Court held the employer is the best judge of fitness for the role.
3. Consideration of the explanation - not acceptance of it - satisfied the legal standard.

HAFIZAH BT JUMAT V THE MALAYSIAN GOVERNMENT & ORS [2022] MLJU 2910

Take Away

A genuine, medically documented mental health diagnosis does not automatically excuse prolonged absence or unauthorised leave - Courts will defer to the employer's assessment of fitness for the role as long as the employer genuinely considered the employee's explanation before deciding, even if it ultimately still terminating her.



DOES COURT ACCEPT MENTAL HEALTH AS A DEFENCE?

Not a standalone defence, but as a relevant fact the employer must be seen to have considered.

What doesn't work as a defence	What the Court actually looks for
Simply asserting stress/anxiety/depression caused the conduct	Medical evidence causally linking the condition to the specific conduct/performance
Employer "knew" about the condition	Whether employee was certified unfit, and whether reasonable process (warnings, PIP, time to improve) was still followed
Diagnosis alone	Evidence the diagnosis explains the specific failure, not general vulnerability

LEGISLATIVE MOVEMENT

A “Mental Health at Work” law in the making?

- Occupational Safety and Health (Amendment) Act 2022, in force since 1 June 2024, extended OSHA 1994 to every place of work in Malaysia, and now allows the Minister to regulate employer monitoring of the ergonomic, physiological and psychological needs and health of employees.
- Department of Occupational Safety and Health (DOSH)’s PRISMA Guidelines (2024) - Psychosocial Risk Assessment and Management at the Workplace. Framed by DOSH leadership as prevention-first.
- A 2026 DOSH flexible-work safety guide extends employer duty of care beyond the physical office to remote/hybrid arrangements.

REMEMBER - SAFER

S – See the behaviour

Focus on observable facts, not diagnosis.

A – Ask before assuming

Give the employee an opportunity to explain.

F – Find the facts

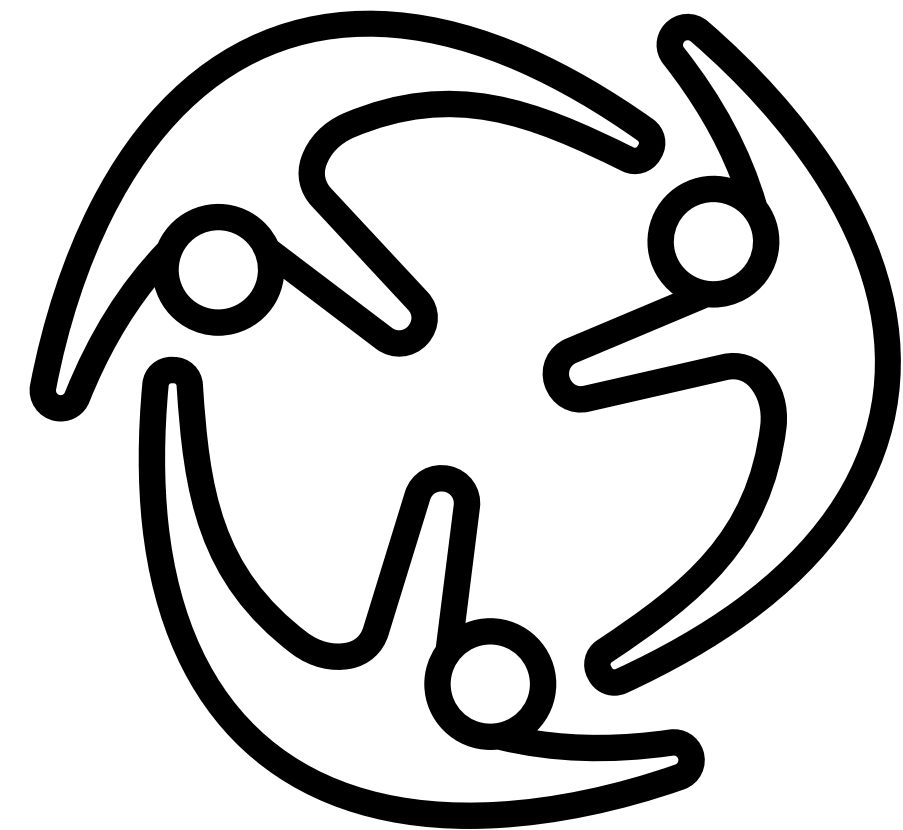
Investigate the conduct/performance issue objectively.

E – Empathise without excusing

Consider the employee's circumstances without automatically disregarding accountability.

R – Respond proportionately

Choose the appropriate intervention — support, performance management, disciplinary action, or a combination.





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