

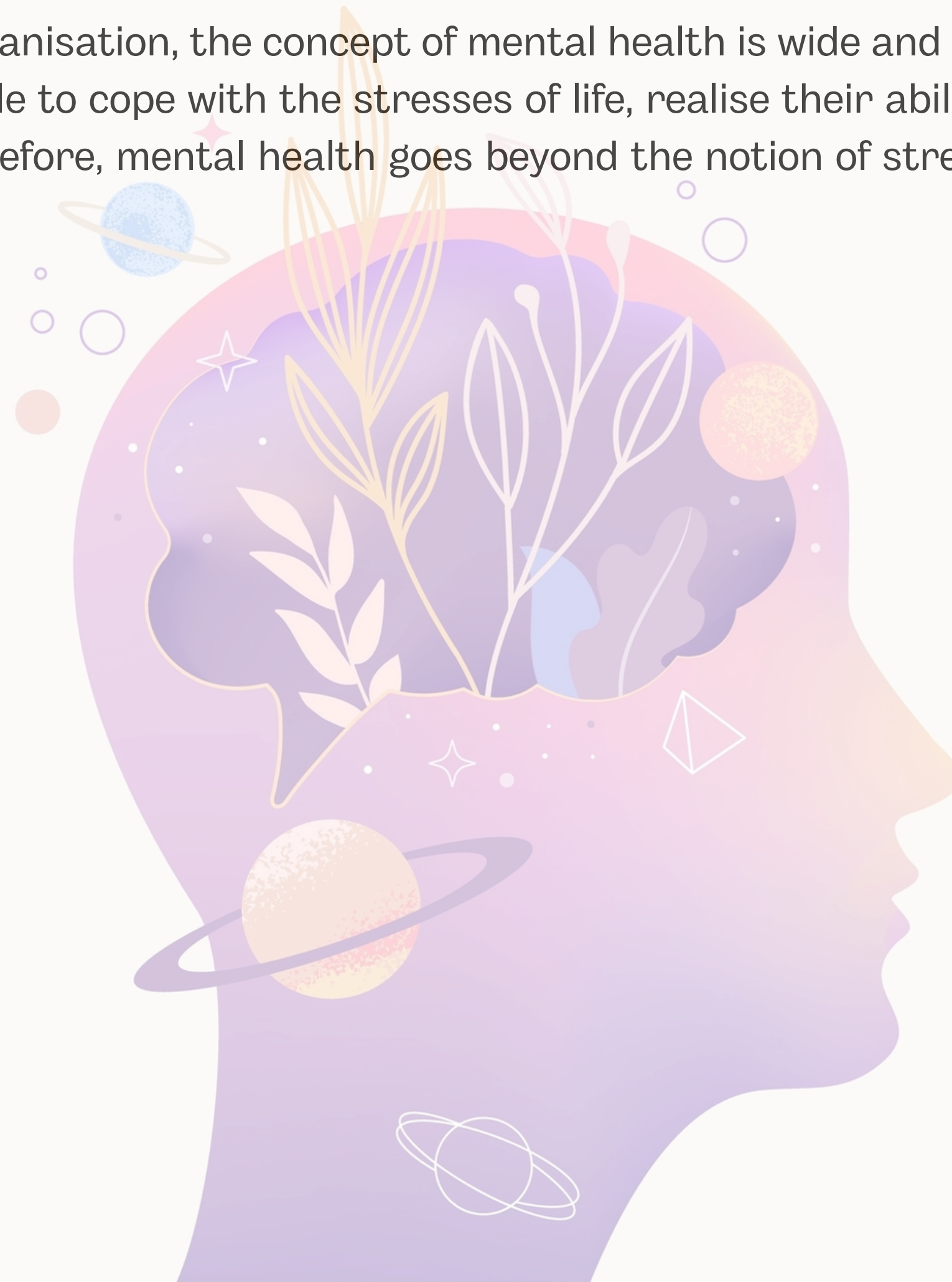


# **Mental health in the workplace Germany & Romania**

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As per the International Labour Organisation, the concept of mental health is wide and it is generally defined as a state of mental well-being that enables people to cope with the stresses of life, realise their abilities, learn well and work well, and contribute to their community. Therefore, mental health goes beyond the notion of stress, anxiety or depression as most people tend to think about it.

Depression, burnout, bipolar disorder, stress resulting from bullying or mobbing, toxic work environments, and various addictions (alcoholism, gambling, workaholism) are increasingly acknowledged for their impact in the workplace.



In this article – available for download here, our experts from [Altenburg](#) in Germany and [Suciu – Employment and Data Protection Lawyers](#) in Romania delve into 5 key questions, offering insights into approaches and highlighting the legal considerations that must be taken into account when addressing such a sensitive topic.

# Where does mental health play a role in the workplace?



In recent years, the promotion of work and employability has increasingly become the focus of social and legal attention in many countries, including Germany and Romania.

On one hand, employers have far-reaching legal obligations when it comes to preventing and combating mental stress in the workplace. However, the real economic cost of mental issues in the workplace is starting to slowly reveal itself, the impact being much greater than anticipated (the most common ones identified by employers being absenteeism and decreased productivity).

Consequently, employers have started to show interest in developing effective mechanisms that not only protect but also strengthen the mental health of their employees, ultimately benefiting their own interests.

# Managing workplace mental wellbeing

## Questions in the application process



In Germany, questions about health status in the application process are only permitted if the physical and mental condition is an essential prerequisite for carrying out the planned job (e.g. significant impairment, risk of accident, risk to self or others due to the illness). In most cases, this will not be the case. If the employer were to ask about this anyway, the employee would not have to answer the question truthfully – the applicant would therefore be allowed to lie without facing any consequences.



In Romania, mental health status can be integrated into the medical evaluation process if mandated by professional healthcare standards or recommended by the occupational health physician. Any information sought by the employer during recruitment should solely pertain to evaluating the capacity to fulfil the vacant role and the professional skills of the candidate.

Taking into consideration that such data is also considered a special category of personal data, a higher standard of evaluation for the legal basis is to be considered.



# Managing workplace mental wellbeing

## Continued payment of remuneration in the event of mental illness

In both countries, it can be seen that no distinction is made between physical and mental illnesses with regard to the continued payment of benefits. This attitude is to be welcomed and does justice to the new realities of the labour market and the increased mental stress.



In Germany, if an employee falls mentally ill during an ongoing employment relationship, they are entitled to continued payment of remuneration by the employer for 6 weeks and after that sick pay from the health insurance fund for a maximum of 78 weeks, just as in the case of physical illnesses.



In Romania, if an employee falls mentally ill during an ongoing employment relationship, they are entitled to receive the same payments as any other worker who sustains a physical injury and requires medical leave. The compensation for medical leave is initially covered by the employer for the first 5 days of temporary incapacity. Afterward, the responsibility shifts to the health insurance fund for a period of up to 183 days (approximately 26 weeks).

# Managing workplace mental wellbeing

## Company integration management after a mental illness



In Germany, if an employee has been unfit for work for more than six weeks in the past year, the employer is obliged to carry out a so-called company integration management program (Betriebliches Eingliederungsmanagement; BEM).

This applies to both physical and mental illnesses. BEM consists of one or more meetings in which factors at the employee's workplace that are detrimental to (mental) health are identified and then the workplace is to be restructured accordingly, if possible.



In Romania, such integration programs are currently unregulated. If an employee is absent for a period of minimum of 90 days and returns to work, a new occupational health examination is required.

During this examination, the occupational health physician assesses whether the employee can resume work and if any specific conditions apply. Any such conditions are then communicated to the health and safety officer, who evaluates if the employee's new fitness status imposes additional obligations on the employer.

# Managing workplace mental wellbeing

## Dismissal due to mental illness

Employers often consider mental illness to be a burden on the company, especially if it lasts for a longer period of time.



In Germany, employers can resort to dismissal in the event of mental health problems, provided that the strict requirements of German case law are taken into account.

In particular, there must be a negative prognosis for the future (i.e. it must be expected that the employee will not be able to fulfil his/her contractual obligation to work in the foreseeable future, for example due to prolonged absence due to the illness) and the company must demonstrably suffer from the absences.



In Romania, the dismissal of an employee due to their mental health issues is permissible only when the employee is officially deemed medically unfit for the responsibilities associated with their position (inaptitudine medicala). This determination must be made through a comprehensive occupational health evaluation.

Without such an assessment, employers are not legally entitled to terminate the employment contract. Unlike in Germany, where future negative prognoses may suffice as grounds for dismissal, Romania requires evidence of incapacity to fulfil job duties.

# Special case “Mobbing”: What are the employer’s obligations?



The term bullying is defined in Germany as systematic hostility, harassment or discrimination between employees or by superiors.

As already mentioned, there are a number of preventive obligations on the part of the employer to design the workplace in such a way that there are as few health and safety risks as possible. This also means that the employer must design the workplace in such a way that bullying is prevented. In the case of bullying, however, it is particularly difficult to prevent, as it occurs in a wide variety of situations and it is often unpredictable when and where it will occur. There is no legal obligation to monitor employees’ behavior towards each other in detail – however, the employer must not deliberately turn a blind eye to what is happening in the company. Positive knowledge triggers an obligation on the part of the employer to intervene. Irrespective of any legal obligation, however, it may be in the employer’s interest to create a peaceful working atmosphere and avoid group dynamics to the detriment of individual employees. Some employers therefore establish contact points for employees on a voluntary basis, for example, or other mechanisms to find out about any incidents as early as possible.

Employers can take measures under employment law against perpetrators of bullying and may even be obliged to do so: employers have a duty to protect their employees from psychological risks and attacks on mental health such as bullying. The employer must therefore take all available means to protect the victims and prevent further bullying by the perpetrators, for example by issuing warnings, transferring or even dismissing the perpetrators.



# Special case “Mobbing”: What are the employer’s obligations?



In Romania, the officially recognised term for workplace mobbing is “harassment in the workplace,” defined as any abusive conduct which, through inappropriate gestures, words or attitudes, harms the employee’s person and contributes to the deterioration of the working climate.

Employers are required to develop and implement internal regulations aimed at preventing and addressing sexual and moral harassment, fostering a safe and inclusive work environment. This includes procedures to be followed when addressing harassment complaints and establishing disciplinary sanctions for employees who engage in acts of psychological harassment.

Employees found guilty of harassment in the workplace may face disciplinary actions, such as warnings or salary reductions. In severe cases, employers reserve the right to dismiss employees for their involvement in such misconduct.

# What claims do employees have against the employer if their mental health is endangered or harmed at work?

In **both jurisdictions**, if the employer is aware of dangers or injuries to the mental health of its employees and nevertheless remains inactive and does not take any protective measures, employees may be entitled to claim compensation from the employer for material and non-material damages. The limits can vary significantly, depending on the context in which they arise and the intent behind the company's actions.



In Germany, in serious individual cases, namely if it is simply unreasonable for the employee to carry out the work under these conditions because the risk to their (mental) health is too great, the employee may also have the right to refuse performance or the right to extraordinary termination (= without observing the notice period) of employment.



Such option can be also accessed by the employees in Romania. The Labour Code provides the employee the right to resign without observing the notice period in case the employer fails to observe the obligations outlined in the employment contract, particularly the obligation to ensure suitable working conditions.



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