

workplace stress



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This booklet is limited to the effects of work-related stress from pressure of work and other such stresses. The issue of bullying/harrassment is not covered here.

WHAT IS STRESS?

Definition

The definition for a legal action requires a **medical diagnosis from a psychiatrist**, for example mild, moderate or severe clinical depression, Acute Depressive Disorder, Anxiety Syndrome, etc. “Stress” itself is not a clinically recognised condition and is not sufficient to bring a claim for personal injury.

BACKGROUND

- Until relatively recently, the courts did not regard psychiatric illness as “personal injury” at all. The first successful stress claim was in the mid 1990s.
- Public policy was to limit stress claims in order to avoid opening the “floodgates” to compensation claims that would be extremely expensive to public and private organisations alike. According to HSE statistics however, around half a million people in the UK experience work related stress to a level they believe is making them ill and a total of 12.8 million working days were lost to “stress”, depression and anxiety in 2004/2005.

LEGAL POSITION

As yet, there is still no law covering work-related stress specifically. A number of laws and Regulations can be used to deal with the many causes and results of work related stress.

However, it is the law of negligence that is most widely used by the courts. The landmark case of ***Hatton v Sutherland***, heard by the Court of Appeal in February 2002 has clarified what the courts will allow in claims like these and set guidelines to be considered in every case. The principals have since been endorsed in several high profile actions.

DUTY OF CARE

The relevant legislation is:

- There is a general duty on the employer to ensure health and safety of employees (Section 2 (1) of the Health and Safety at Work Act 1974). They have to ensure *as far as is reasonably practicable*, the health, safety and welfare at work of all employees. The HSE has now made it clear that this includes stress related illnesses.

- Every employer has a legal duty to make a suitable and sufficient assessment of the risks to the health and safety of employees to which they are exposed whilst at work, so that they can take the appropriate preventive and protective measures. (Management of Health and Safety at Work Regulations 1998). The employer is required to take into account the capabilities of the specific individual doing the job when assessing the risks.
- There is an implied term in every contract of employment that the employer will take care of the health and safety of their employees.

The law of negligence requires employers to provide a safe system of work. If there is a foreseeable risk of injury and the employer fails to take reasonable care to protect the employee, the duty of care may have been breached, giving rise to a civil claim.

In negligence the question will always be “was this kind of harm to this particular employee reasonably foreseeable?”

FORSEEABILITY

What did the employer actually know and what ought he reasonably to have known?

An employer is usually entitled to assume that an employee can withstand the normal pressures of the job unless he knew of some particular problem or vulnerability in the employee. If the employer says that he knew nothing of the stress that the employee was suffering, and had no reason to believe that there was likely to be a problem, it will be difficult to prove that the risk of injury was foreseeable.

Factors likely to be relevant, as identified in the Hatton case are:

- the nature and extent of the work done by the employee
- did the employee have a much heavier workload than others?
- is the work intellectually demanding?
- are the demands of that employee unreasonable compared to the demands made of others in comparable jobs?
- signs from the employee of impending harm to health
- are there signs of other workers also suffering?

Employers are generally entitled to take what the employee says to them at face-value. If the employee denies any problems, there is no burden on the employer to change anything at all. To trigger a duty to take action, the indications of impending harm to health arising from stress at work ought to be plain enough for any reasonable employer to realise that he should do something about it.

In order to prevent the problem from getting worse, the employee should notify the employer (in writing preferably) of the problem and of the circumstances giving rise to it. This may produce some change and stop the problem from getting any worse. If it does not, the complaint/warning is invaluable in any subsequent legal action.

BREACH OF DUTY

The employer will only be in breach of his duty to the employee if he fails to take reasonable steps to do something about the risk of injury. When deciding what is reasonable, relevant factors (from the Hatton case) are:

- the size and scope of the employer's operation
- the employer's resources; and
- the demands faced by the operation

It follows that more will be expected of larger employers when compared to small family companies.

Specifically, in Hatton, the court found that if there is a confidential advice service open to employees, with referral to appropriate counselling or treatment services, the employer is unlikely to be found in breach of its duty to the employee. However, if there is no such service, it does not automatically mean that the employer is in breach of its duty.

If the only reasonable and effective step that could be taken to avoid the risk of injury to a particular employee is dismissal or demotion, then to allow the employee to remain in his job if he wishes to do so would not be in breach of the employer's duty. Because of this, in all cases it is necessary to identify in detail all steps that the employer could and should have taken.

The HSE recognise "stress" has a preventable workplace hazard and has published guidance leaflets to help employers to tackle it. In 2004, the HSE also published Management Standards which deal with six factors contributing to stress in the workplace; these are demand, control, support, relationships, role and change and whilst these standards are not

legally binding, they are useful when considering whether an employer has breached their legal duties. Further information can be obtained from www.hse.gov.uk/stress.

CAUSATION

It is only possible to claim for injuries that have been caused or contributed to by the breach of duty. Where the harm suffered has more than one cause (for example, if there was a death, or a family break-up as well) the courts have decided that the employer should only pay for that proportion of the harm suffered that was attributable to his wrongdoing (unless the harm was truly indivisible). This will be a matter for expert medical evidence.

Further, the damages allowed will take account of any pre-existing disorder or vulnerability in the particular employee to stress and the psychological symptoms he is suffering from. If there is a chance that the employee would have succumbed to a stress-related disorder in any event, then the damages would be less. Again, this is a matter for a medical expert.

LOSS - WHAT CAN BE CLAIMED?

Once the actual injury is known, and the proportion of it that is due to the breach of duty has been identified, the losses flowing from that part of the injury can be considered.

There is always an award of “general damages”, for pain, suffering and loss of amenity. This is estimated based on cases where similar injuries have been suffered and damages awarded by courts in the past, updated to today’s figures.

In addition, “special damages”, or out-of-pocket expenses may be claimed. Common heads of special damage include loss of earnings, cost of medical treatment and travelling expenses associated with treatment and with contact with the employer during absences from work. There are other items that can be claimed, too numerous to mention here.

SUMMARY

- Make written complaints, or record verbal complaints accurately in writing as soon as possible, including the parties present, the date, time and location.
- Keep a diary on daily basis to include details of the work expected to be done, the deadline/target and whether there are sufficient resources allocated to the task (including personnel).
- Find out whether other workers are suffering similar problems and if so, ask them for details. They could be willing witnesses.
- Because of the issue of “foreseeability” often a first absence for stress will not be recoverable. However, as long as the employer is then aware of the reasons for the absence (including the fact that it was stress-related, and the pressures alleged to have caused it), any subsequent absence has a reasonable chance in any stress action.
- Every stress claim is likely to be an additional source of stress to the person concerned. Serious consideration should be given as to whether the individual is able to take on the strain, bearing in mind the uphill struggle that will face them in trying to prove their case.

HATTON V SUTHERLAND – A SUMMARY

1. If the stress is caused by the “manner” of a person’s dismissal then this is not actionable as a stress claim in the civil courts.
2. It has to be shown that it is reasonably foreseeable that the particular worker concerned would fall ill as a result of their work and the employer failed to take reasonable steps to ensure an employee’s health and safety.
3. If an employer has a confidential advice service with referral through to treatment that the employee could use, then they have taken sufficient steps to ensure an employee’s health and safety is guarded.
4. Employers are entitled to assume that employees can withstand normal pressures of the job unless they are warned otherwise.
5. Employers are entitled to take what employees tell them at face value. If they return to work after a period of absence caused by work-related stress and do not raise work levels as a concern, then employers are entitled to assume they can cope.

6. No occupation carries with it an obvious or higher risk of stress than any other. The first thing to show is that the illness was reasonably foreseeable with respect to

a. Nature and extent of work done

- Did the employee have a much heavier workload than others?
- Is the work intellectually demanding?
- Are the demands of that employee unreasonable compared to the demands made of others in comparable jobs?
- Are there signs of other workers also suffering?

b. Signs from employee themselves that they are suffering harmful stress.

- Previous illness caused by stress at work?
- Unusual and frequent absences from work by that employee that are out of character

7. Once it is established that the illness was reasonably foreseeable then the employee will still have to show

- that the indication of impending harm was plain enough for a reasonable employer to realise that they should do something
- that the employer failed to take steps to prevent the employee from suffering injury as a result of stress

8. The size and resources of the employer will dictate what steps are considered reasonable.

9. If the only reasonable step would have been to sack the employee and the employee elects to stay on, then the employer will not be liable.

10. The injury must be caused by the breach of the duty of care on the employer and not by occupational stress alone.

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