

STRESS IN THE WORKPLACE

In recent years, an increasing number of negligence claims have been brought by employees who have suffered psychiatric injuries which they claim have arisen as a direct result of stress at work. There are many reasons why employers should take active steps to prevent their employees from suffering workplace stress. Apart from the fact that stressed employees will not perform their job well, if at all, there are potential legal consequences for those employers that fail to protect their employees from extreme or prolonged stress at work.

This fact sheet addresses not only how to prevent workplace stress but also how to deal with it when it does occur.

What potential claims could an employee bring relating to workplace stress?

1. A personal injury claim

A personal injury claim in this context is an allegation that the employer has failed in its duty to take reasonable steps to ensure an employee's health and safety and to protect him or her from reasonably foreseeable risks. The claim usually takes the form of either an allegation of negligence or one of breach of a statutory duty e.g. a duty under one of the Health and Safety regulations – see further below.

A claim of negligence occurs where an employee suffers a recognised mental illness (e.g. clinical depression) as a result of the employer's breach of its duty of care towards the employee and the employer could reasonably have been expected to foresee that it might happen. The employee will need to show that the employer's breach caused his or her psychiatric injury and that it was not caused by some other reason e.g. problems in the employee's personal life. The employee will also need to demonstrate that the risk of their suffering the personal injury was reasonably foreseeable. In practice, many personal injury claims fail on this ground. However, if the employee has already suffered from a previous mental illness in the past of which the employer is aware or the employer is made aware that the employee is susceptible to suffering from one on this occasion (for example, because the employee has complained to the employer that they are suffering from stress), then it will be easier for the employee to show reasonable foreseeability.

An employee who succeeds in a personal injury claim can recover unlimited damages, including damages for loss of income, pain and suffering and loss of amenity (which could include loss of enjoyment of hobbies, the loss of the ability to form personal relationships, etc). This type of claim is brought in the High Court or in the County Court.

2. A constructive dismissal claim

In the context of a stress claim, an employee may allege that he has been constructively dismissed if the employer has failed to take remedial steps despite an employee

complaining about stressful conditions at work i.e. the employee alleges that the employer has breached a fundamental term of the employee's contract of employment or the employer is in serious breach of the implied duty of mutual trust and confidence that exists between employer and employee.

Constructive dismissal occurs where an employee terminates his or her employment (by resigning) in response to the employer's treatment. Although there has been no actual dismissal, the treatment is sufficiently bad that the employee is entitled to regard themselves as having been dismissed. This type of claim is brought in the employment tribunal.

3. A disability discrimination claim

If a stressed-out employee satisfies the definition of disability contained in the Equality Act 2010, the employer will be required to make reasonable adjustments to work provisions, criteria or practices in order to accommodate the employee (see the fact sheet on absenteeism, ill-health and disability discrimination for further information). Mere stress alone is not, however, a disability, but bear in mind that stress is often a symptom of or a response to some other more serious illness.

4. Breach of Health and Safety legislation

All employers have a common law duty to take care of their employees' mental health as well as their physical health and safety. Furthermore, the Health and Safety at Work etc Act 1974 obliges all employers to ensure the health, safety and welfare at work of all their employees as far as is reasonably practicable. The statutory provisions are broadly equivalent to the common law duty of care. 'Health' in this context includes mental health, which, of course, can be damaged by excessive or prolonged workplace stress. Failure to comply with Health and Safety legislation could result in a criminal prosecution brought by the Health and Safety Executive. Penalties include fines and/or imprisonment. Where the employer is a limited company, it is possible in law for criminal proceedings to be brought against a specific director or officer of that company where the breach is committed with the consent or connivance, or due to the neglect, of that person. In addition, even though breach of the Health and Safety at Work Act etc 1974 itself cannot of itself form the basis of a civil action, where a breach of the various Health and Safety regulations causes damage, a civil action can be brought unless the regulations specifically prevent such an action from being brought.

Common causes of workplace stress

Amongst the most common causes of workplace stress are excessive workloads, over-long working hours, lack of support or insufficient training, bullying and harassment (whether or not this also amounts to unlawful discrimination because of age, disability, gender reassignment, race, religion or belief, sex or sexual orientation), problem relationships at work, feelings of isolation and fear of change.

Key factors that often contribute to stress are the feeling of not being in control and not having much say in how the work is done. As an employer, you are required to take action when you reasonably believe that an employee is suffering from stress (for example, because of the symptoms they are showing) and not only when an employee informs you that he or she is stressed.

What should you do in cases of actual or suspected work-related stress?

1. Carry out a preliminary investigation into the issues that may be causing the stress

The Health and Safety Executive have produced a set of 'Management Standards'. These standards provide very useful guidance on this area and should be referred to when carrying out an investigation into stress in the workplace.

The HSE has also produced a guide on making the stress Management Standards work. This can be downloaded at <http://www.hse.gov.uk/pubns/indg430.pdf>.

2. Arrange a meeting with the employee to discuss the issues

If the employee raises a grievance about the stressful working conditions, you should follow your grievance procedure (see the fact sheet on grievance hearings & appeals – fair procedure for further information). If the employee complains verbally, it is advisable to still meet with the employee on an informal basis to discuss the particular problems they are experiencing.

3. Seriously consider and investigate the issues raised by the employee

After the meeting, you should carry out a full investigation into the issues raised by the employee. You should then write to the employee with the outcome of the meeting and put in place appropriate systems to reduce the stress levels for the employee. Once an employee has informed you that he or she is suffering from workplace stress, you are under an obligation to take steps to alleviate the stressful conditions. Failure to do so could result in your being liable for a personal injury claim if the employee subsequently falls ill due to work-related stress.

4. Monitor the employee's condition

Once steps have been put in place to assist the employee, monitor the employee's situation on an ongoing basis to ensure that it does not deteriorate.

5. Allow employees access to a confidential counselling service

Recent cases have stated that an employer who provides its employees with access to a confidential counselling service may not be found in breach of its duty of care towards its employees. However, providing access to a confidential counselling service will not of itself eliminate an employer's responsibility towards employees where an employer has been placing totally unreasonable demands upon an employee in circumstances where the risk of harm was clear.

Tackling common causes of workplace stress

1. Tackling excessive workloads

- Review each job and the way it is done with a view to introducing improvements wherever possible.
- Cut out all unnecessary or duplicated work.
- Ensure workloads, targets and deadlines are realistic.
- Talk to all employees to review whether the demands being made on them are within their individual coping resources.
- Give individuals more control over their work wherever possible.

2. Managing working hours

- If there is evidence of pressure on employees to consistently work long hours, you must take action to change the culture.
- Line managers should make sure that every employee restricts his or her working hours to a reasonable level and takes regular breaks and holidays – set targets for improvement.
- Introduce a policy of offering employees flexibility as to the number of working hours and working patterns whenever possible.
- Encourage employees to achieve a work-life balance and respect those who wish to limit their working hours to a reasonable level.

3. Providing support and training

- Be aware that individuals require different levels of support and training.
- Support employees whenever they need it, for example after a period of absence or when newly promoted.
- Ensure employees receive sufficient coaching and training to enable them to perform their job effectively and confidently.
- Offer employees training in personal stress management.

4. Preventing bullying

- Implement an anti-bullying/harassment policy and complaints procedure, making sure that everyone knows that bullying and harassment will not be tolerated and that all instances of such behaviour will be viewed as potential gross misconduct.
- Take prompt action whenever there is any evidence of bullying behaviour, first to investigate it and second to put a stop to it.
- Ensure that line managers are trained in how to deal with allegations of bullying or harassment.
- Take all complaints seriously and act on them promptly.

5. Encouraging two-way communication

- Ensure all employees are made aware of how his or her job fits in within the organisation as a whole.

- Make sure employees understand what is expected of them in terms of objectives, job responsibilities and work standards.
- Give employees regular feedback on their performance.
- Take positive steps to ensure that employees are informed, involved and, where appropriate, consulted, especially during periods of change.
- Provide a clear route for employees to raise genuine workplace problems and make sure that everyone knows there will be no recriminations for those who do so.

Managers should be conscious of the possibility of employee stress, because every individual is different in terms of his or her coping resources. An organisation that is free from complaints of workplace stress is not necessarily one in which no stress problems exist. This is because few employees will admit to suffering from stress because they may feel embarrassed about it, they may feel guilty or they may fear that they will be perceived by management as weak or incompetent if they admit to it. Management should recognise that workplace stress is a serious issue and resolve to address it in a positive and constructive manner with a view to prevention or reduction wherever possible.