

Wexford Chamber of Commerce H R Forum

Stress at work

February 23rd 2009



MJ O'Connor Solicitors

Stress at Work

When is an employer liable?

- what is stress
- how will a claim be made
- consequences to you
- case law
- guidelines



Understanding Stress

Occupational stress

- work load
- job targets
- monotony
- lack of job security
- demotion and resulting humility
- bullying



What is stress

The elephant

- no statutory definition
- not an illness
- can cause illness to occur



What can cause stress

- poor communication
- poor work relationships
- dull repetitive work
- ill defined roles
- highly demanding tasks
- unrealistic targets
- bad work organisation



The claim

- personal injury through the courts
- constructive dismissal – Employment Appeal Tribunal
- discrimination – Equality Tribunal
- Health and Safety – Safety Health and Welfare at Work Act 2005
- breach of contract - court



Consequences

EAT

up to 2 years salary

Courts

actual damages and compensation

Equality

up to 2 years salary and rulings

PIAB?



When is an employer liable

Four essential headings

- duty of care
- Injury
- cause
- foreseeability



When is an employer liable

Duty of care

- safe place of work
- free from hazards/bullying/harassment
- not absolute duty to do everything
- what would a reasonable and prudent employer do
- negligent breach of duty = cause of action



When is an employer liable

Injury

- must be an injury
- must be recognisable psychiatric illness



When is an employer liable

cause

- injury must be as a result of stress at work
- not responsible for outside causes
- “egg shell skull” rule
- take plaintiff as he is
- must be as a result of breach of duty



When is an employer liable

foreseeability

- foreseeable injury as result of stress
- brought to attention of employer – knowledge
- grievance procedure
- employer ought to have known



Health and Safety

Safety Health and Welfare at Work Act 2005

- Section 8 – duty of care for employer
- Section 13 – duty for employee to take care
- Section 19 – obligation to identify hazards
- Section 20 – safety statement



Health and Safety

Liability under the act

- prosecution for breach of statutory duty
- fines of €3,000 to €3,000,000
- imprisonment from 6 months to 2 years
- personal liability of directors and managers



Equality

Stress is a disability

- no absolute obligation to employ a person with disability
- reasonable accommodation
- some case examples
 - Health and Fitness club –v- a worker
 - Feore –v- Alzheimer Society
 - Kilbride –v- HSE
 - Employee -v- Government Department



Constructive dismissal

Claim under Unfair Dismissal Acts

- alleges fundamental breach by employer
- employee has to prove dismissal
- grievance procedures are important



Hatton principals

- ordinary principals of employers liability apply
- was the harm reasonable foreseeable
- what the employer knows or ought reasonably to have known
- No special case for high stress work
- relevant factors – work load/vulnerability/reaction of others
- take what you are told at face value
- reasonable employer must realise he should do something
- breach if employer fails to take reasonable steps



Hatton principals

- scope and size of business are relevant for what is reasonable
- only to take steps likely to do some good
- confidential advice service
- don't have to dismiss if employee is willing to continue
- identify steps employer could have taken
- breach of duty has to cause the harm
- can apportion liability if more than one cause
- take in to account pre existing disorder or vulnerability



Irish cases

- McHugh –v- Minister for Defence (2001)
- McGrath –v- Trintech Technologies (2004)
- Maher –v- Jabil Global Services (2005)
- Berber –v- Dunnes Stores (Supreme Court appeal 2009)
- Allen –v- Independent News
- Pickering –v- Microsoft (under appeal to Supreme Court)
- Quigley –v- Complex Tooling and Moulding Limited (2005)



Obligations of employer

- to ensure work load is not objectively excessive and stress causing variables are prevented
- to assess whether individual can cope
 - Am I proactive in observing employees
 - Are effective communications lines open
 - Has anyone a previous history
 - Am I sufficiently trained to spot
- to manage person suffering from stress
 - Dismiss?
 - how far do you go to provide reasonable accommodation
 - Is there a counselling service



Guidelines

- be informed
- carry out risk assessment
- policies and procedures
- implementation of policies
- clear job descriptions
- interview and application information
- clear job function
- proper training for job function



Guidelines

- support to enable employee carry out duties
- on going appraisal, use objective criteria, invite feedback
- review work loads/hours/objectives
- address complaints promptly
- employee assistance programme
- train HR people and management
- records



If a complaint is made

- assure employee of support
- inform of supports, employee assistance programme, counselling
- investigate the allegation
- give employee opportunity to provide medical evidence
- get independent assessment
- if complaint is upheld take steps to manage source of stress
- follow fair procedures
- engage with employee at all times, keep informed
- advise insurers if necessary



Stress related absence

- get independent medical advice
- never act without clear medical advice
- consult with employee and advisers
- investigate appropriate measures to secure return to work
- keep in mind that the employee may sue
- follow fair procedures – warnings
- consider alternatives – reasonable accommodation
- consider termination



Stress at Work

- Employer can be liable
- Employee has to prove case before courts
- Policies and procedures are most important
- Employer must be aware and informed
- Employer must be vigilant
- Will need outside assistance in most cases



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