

STRESS IN THE WORKPLACE – IS IT ALL GETTING TOO MUCH FOR YOU?

Recent years have seen a dramatic rise in people wanting to pursue claims based on psychiatric difficulties caused by stress at work. It is important to recognise at the outset that most work is stressful from time to time and so to be able to claim damages for work related stress there are a significant amount of prerequisites that need to be established for a claim to stand any chance of success. This article will explore how the Courts have made it increasingly difficult over the years for an employee to bring a successful claim against their employer and will highlight the essential ingredients needed for a claim to be a valid one.

What does stress mean?

It is important for any Claimant to establish that they have suffered from a recognisable psychiatric illness as opposed to stress in its ordinary lay meaning. A diagnosis by a GP will not suffice. Police Officers are often reluctant for such a diagnosis to be made fearing that it will impact on their career, but without a psychiatrist becoming involved no claim can be pursued.

What causes stress at work?

Stress can be caused by a multiplicity of factors. The most common are having too much or too little work, monotonous work, lack of control over work activity, confusion or conflicting roles, poor communication, a culture of blame, bullying in the work environment or frequent change/instability.

Discipline cases

Any claim for stress arising out of the circumstances of an Officer's arrest, the subsequent investigation or a disciplinary investigation is barred from being pursued as a civil claim. This principle was established in the case of *Calverley & Others vs. The Chief Constable of Merseyside* (1989). In this case Officers were prosecuted and dismissed and then reinstated on appeal. They claimed compensation against the Force for their anxiety and stress, loss of overtime and the damage to their reputation. It was held that there was no duty of care owed by a Police Officer investigating a crime to a civilian suspect and therefore there was no corresponding duty owed by a Police Force to an Officer who was the subject of a disciplinary or criminal investigation.

Stress arising out of the horrific nature of work itself

This is a common problem for Police Officers. Russell Jones & Walker have seen numerous examples of Officers who have suffered extreme psychiatric breakdown as a result of witnessing horrific aftermath of events such as 7th July, body recovery work and fatal road traffic accidents. In *Sutherland vs. Hatton* (2002), the Court held that no single occupation was intrinsically damaging to health. An employee will often try and argue that they have absolved themselves from liability by offering a confidential counselling service. Recent cases have held that this in itself does not render an employer immune from liability. However it is important to note that just witnessing a horrific event is not sufficient to bring a claim. In these types of cases, successful claims can normally only be brought where an Officer has a legitimate fear for their own safety.

Work overload claims

These claims are common but very difficult to be successful in.

An Officer would need to be able to prove that the psychiatric harm they suffered from was foreseeable to their employer. Establishing foreseeability depends on what an employer knew or ought to have known about an individual employee. The Courts will look at the nature of the job and see whether it was much more than normal for that particular job and whether the demands put on that Officer were reasonable compared to demands placed on others. If the only remedy to an Officer's condition is dismissal, an employer will not normally be held to be liable for allowing a willing employee to continue in the job. Any Claimant needs to be able to identify the steps an employer could have or should have taken to stop their condition developing. At the same time they are under a duty to notify their employer not only that the workload is too much for them, but also about the effect it is having on their health. Police claims often fail for this reason as Officers are reluctant to notify their Force as to the psychiatric consequences that the work is having upon them and hence these claims fail on grounds of foreseeability.

Bullying and harassment claims

Claims can be brought potentially for both negligence and under the Protection from Harassment Act 1997. In the case of *Conn vs. City of Sutherland* (2007) the Court gave a very restrictive definition to the meaning of harassment. It found that the conduct complained of must amount to a breach which would satisfy the test for a criminal sanction. This means that to bring a successful harassment claim the type of behaviour complained of needs to be extreme, stopping little short of what would amount to criminal behaviour. In subsequent cases this stringent test has been slightly diluted but there is still a requirement of the conduct being "oppressive" and "unreasonable".

To succeed in a claim for negligence as a result of bullying a Claimant needs to show that there is a documented history of bullying which an employer was well aware of and which the employer failed to take reasonable steps towards improving the situation. The bullying must be sustained and very serious. In the well publicised case involving the Deutsche Bank, the Courts found that the Claimant was successful because she had been the victim of a "relentless campaign of mean and spiteful behaviour designed to cause distress".

Summary

Stress cases are common but notoriously difficult to be successful in. Most cases fail due to the lack of foreseeability. This remains an uncertain and difficult area of the law and is likely to continue to be so for many years to come.

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