

The stress of the credit-crunch

Article

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Contents

- The Problem
 - The Law
 - Expert Advice
 - To Do Checklist
 - Beware!
-

The Problem

The issue of stress at work has been in the forefront of the media recently, with predictions that the number of employees who are suffering from work-related stress may increase because of the credit-crunch and extra scrutiny and pressures placed upon employees to improve productivity or face losing their jobs.

The Health and Safety Executive (“HSE”), the government agency responsible for the enforcement of health and safety law and regulation, has recently published guidance, jointly with the Chartered Institute of Personnel and Development and Investors in People (CIPD), titled Line Management Behaviour and Stress at Work, which aims to help employers understand the risks and comply with their obligations in this area.

The Law

There is no one single area of law which covers stress-related issues in the workplace. Individual employees are protected in several ways, all of which an employer needs to be aware. These include:

- Health and safety legislation which places duties upon employers to ensure, so far as reasonably practicable, the health, safety and welfare at work for their employees and obliges employers to carry out a risk assessment of all health and safety risks.
- The Working Time Regulations 1998, which place limits on working hours and impose set daily and weekly rest breaks, paid annual leave and requirements for night workers to undergo health assessments.
- The common law tort of negligence which places duties upon employers to take reasonable care for the health and safety of their employees, further to which employees may bring claims for personal injury. The key issues from recent case law in this area are whether or not the stress-related illness was reasonable foreseeable and, if so, whether the employer had taken adequate steps to remedy the situation, for example redistributing work, counselling or offering an employee additional time off.
- Disability discrimination. If an employee can establish that their stress-related condition amounts to a disability in accordance with the statutory definition set out in the Disability Discrimination Act 1995, an employer could be liable if it is found that it has discriminated against the employee due to that disability. An example is if any employee is disciplined for poor performance, but the reason for that poor performance was his/her disability. Employers may also be liable if it is found that they have failed to make reasonable adjustments to arrangements in the workplace which place a disabled employee at a particular disadvantage. This obligation may extend to payment for sickness absence, reduced hours, reallocation of work, additional training or supervision, counselling.
- The implied duties in every contract of employment that employers will take reasonable steps to ensure the health and safety of their employees at work and the duty of mutual trust and confidence. If an employer is seen to have breached either of these duties, an employee may choose to resign and claim that they have been

constructively unfairly dismissed.

- Protection for employees against being unfairly dismissed as a result of poor performance or misconduct caused by work-related stress

Expert Advice

Employers are required to have health and safety policies in place. It is advisable these should cover the topic of stress at work to deal with situations where employees suffer from stress during their employment, whether or not it is directly as a result of their work. By having a good policy in place, and following through on the policy statements and procedures, employers should reduce their risk of being liable under any of the above categories. Failure to adhere to health and safety legislation could result in criminal sanctions imposed by the HSE. However, there are also risks that employers will also face employment claims from employees under any of the other areas of law affected by stress at work.

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To Do Checklist

Get your stress at work policy in shape and carry out a full risk assessment of stress factors at work. The risk assessment should cover the following areas, as suggested by the HSE:

- Identification of demands placed on employees, including workload and physical hazards; levels of control exerted over an individual's work; relationships, including issues of bullying and harassment; organisational change and communication in the workplace; individual roles, including whether individual employees understand their roles; and support for employees. The HSE call these areas "hazards" in the workplace and these can be identified by a variety of methods including speaking to staff, return to work interviews after sickness absence and monitoring sickness absences.
- Assess who may be harmed by the hazards identified.
- Evaluate the risks posed by the hazards to those who are exposed and put solutions in place.
- Monitor, review and assess on a regular basis.

A stress at work policy should:

- Include a statement that the employer is committed to alleviating the effects of stress on employees and to taking action to protect the mental well-being of its staff.
- Detail methods to be used to assess risks, investigate and resolve cases of stress at work.
- Encourage employees to raise issues of stress at work with their line managers or HR.
- List sources of support available to staff, for example occupational health, support groups, counselling, training on stress management.
- Cross refer to other policies which are relevant, including the sickness absence policy, appraisal and staff development policy, capability procedure, harassment and anti-bullying policy, flexible working policy, and grievance and disciplinary policies.

- Not simply be a policy document. Monitor the impact of the policy; review it regularly and consider if there are any issues identified as a result that require action.

Beware!

If an individual is able to prove that they have suffered stress as a result of workplace pressures or bullying which has been ignored, an employer may face a potentially unlimited award in the Employment Tribunal or High Court. It is, therefore, important to ensure that employees are not placed under unnecessary pressures and, if any indicators of stress arise, affected employees are offered appropriate support. In addition, non-compliance with health and safety legislation carries the risk of criminal penalties.

More information

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