

Gaby Hardwicke SOLICITORS

**WORK PLACE STRESS AND
MANAGING SICKNESS ABSENCE**

- A PRESENTATION BY PAUL MAYNARD





PRESENTATION OVERVIEW

- **Work Place Stress**

- What is stress
- Why is it a problem for you
- HSE Management Guidelines
- Benefits of tackling work place stress
- Types of claim you could face
- Guidance from the courts

- **Managing Sickness Absence**

- Sick pay
- Absence management – Preventative Measures
- Sickness Dismissals
- Disability Discrimination

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WHAT IS STRESS?

- “An adverse reaction people experience when excessive pressures or types of demand are placed on them” (HSE)
- Stress can be good for you!
- Stress is not an illness but it can trigger other illnesses such as anxiety, depression and heart disease

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WHY IS IT AN ISSUE FOR YOU?

Some statistics

- The average employee takes 8.4 days sick leave a year
- The average public sector worker takes 10.3 days sick leave a year
- Two out of five workers do not take any sick leave at all
- Managers are less than half as likely to take time off as manual workers
- Half a million people at any one time claim to suffer stress at a level which makes them ill
- According to a recent Dept of Health survey stress is now the commonest cause of work-related absence.

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WHY IS IT AN ISSUE FOR YOU?

Some cases

- Special needs teacher awarded £254,000 after two nervous breakdowns caused by pressures of her job
- An accountant for a components company awarded £150,000 after he suffered depression caused by work place bullying
- A teacher awarded £72,000 for his employer's failure to make enquiries about his health on his return to work following an episode of stress and depression
- A fireman forced to transfer to desk duties because of alleged victimisation by a senior officer received £150,000
- A derivatives trader frequently subjected to foul and abusive language and threats of dismissal by his manager received £795,000

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STRESS IS A HEALTH AND SAFETY ISSUE

- Covered by Health and Safety at Work Act 1974 and Management of Health and Safety at Work Regulations 1999
- Risk Assessments
- Management Standards
 - employees indicate they can cope with the demands of the job
 - they have a say about the way they do their work
 - they receive adequate information and support from their colleagues or superiors
 - they indicate that they are not subject to unacceptable behaviour
 - they understand their role and responsibilities
 - the organisation engages them frequently when undergoing change
 - systems are in place to respond to individual concerns
- Benchmark for claims
- Criminal prosecution

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BENEFITS OF TACKLING WORK RELATED STRESS (HSE)

- Employee commitment
- Enhanced performance and productivity
- Reduced staff turnover
- Improved attendance
- Customer satisfaction
- Improved image and reputation
- Claims avoidance

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STRESS CLAIMS

■ EMPLOYMENT TRIBUNALS

- Constructive Dismissals
 - Implied term of mutual trust and confidence
- Working Time Regulations
- Disability Discrimination
- Other forms of discrimination

■ COUNTY/HIGH COURT

- Negligence
- Breach of Statutory Duty
- Harassment claims

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SUTHERLAND V HATTON (CA) 2002

- An employer will not be liable for an employee's psychiatric injury unless it was reasonably foreseeable that the employee in question would suffer such an injury as a result of occupational stress
- The following factors are relevant to the issue of foreseeability

Demands of the job

- Nature and extent of the work
- Workload greater than normal
- Work intellectually or emotionally demanding
- Unreasonable demands made as compared with others
- Abnormal sickness levels in the department

Circumstances of the employee

- Signs of impending harm to health?
- A particular problem or vulnerability?
- A past illness attributable to sickness at work?
- Frequent or prolonged absences which are uncharacteristic

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SUTHERLAND V HATTON – Further Guidance

- In summary the duty to take steps only arises where signs that an employee might suffer psychiatric illness from stress at work are plain enough that any reasonable employer would realise that he should act.
- What steps might an employer take?
 - sabbatical; transfer; redistributing work; extra help; arranging treatment or counselling; buddying or mentoring.
 - always subject to size and scope of employers operation; its resources and the demands and interests of other employees
- “An employer who offers a confidential advice service including counselling or treatment is unlikely to be found in breach of duty except where he has been placing unreasonable demands on an individual where there was a clear risk of psychiatric injury.”

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BARBER V SOMERSET CC 2004 (HL)

- A claim will succeed when the indications were plain enough for any reasonable employer to have realised that they should do something about it and either did nothing or too little.
- Employers should be reactive and proactive at an early stage and not ignore symptoms or information which in any way puts them on notice that an employee is in trouble.
- There is no onus on the employee to complain. The duty is on the employer to organise a system of work to manage the risks of occupational stress.

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BULLYING AND HARASSMENT CLAIMS

- **S1 Protection from Harassment Act 1997**

- a person must not pursue a course of conduct which amounts to harassment of another.

- **Majrowski v Guys and St Thomas' NHS Trust (2006) (HL)**

- an employer can be vicariously liable for actions amounting to harassment where there is a sufficiently close connection between the harasser's conduct and the nature of his/her duties.

- **Green v D B Group Services (2006) (HC)**

- G complained of her colleagues ignoring her; staring at her; excluding her from conversations and group activities; laughing when she walked past and removing her name from circulation lists. The bullying continued after she complained. The employer was found vicariously liable under the 1997 Act.
 - She was awarded £852,000.

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SICK PAY

- Contract of employment must explain the position – section 1 ERA 1996
- Statutory Sick Pay (SSP)
 - 28 weeks in any 3 year period
 - not eligible for first 3 days
- Contractual Sick Pay
 - the dangers of discretionary schemes
 - recoupment if third party is negligent
 - notification and evidence
 - dismissal whilst in receipt of contractual sick pay

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ABSENCE MANAGEMENT

- Preventative Measures

- Establish and implement a grievance procedure
- Establish a bullying/harassment procedure
- Draft and implement an Equal Opportunities Policy
- Establish an attendance/disciplinary procedure
- Implement a stress policy
- Undertake a stress risk assessment – consider HSE standards
- Follow the best practice guidelines
 - early contact
 - timing of health assessment
 - quality of health assessment
 - flexible return to work options
 - sickness monitoring
 - return to work interviews

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SICKNESS DISMISSALS

Short Term Persistent Absence

- fair review of absences and reasons
- return to work interviews
- consultation
- appropriate warnings (consider set levels)
- If underlying condition consider DDA and obtain medical report

Long Term Absence

- consultation throughout absence
- ascertain all facts from employees
- full medical investigation
- consider alternative employment/reasonable adjustments

**REMEMBER THE 3 STEP STATUTORY DISMISSAL
PROCEDURE STILL APPLIES**

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DISABILITY DISCRIMINATION

- Who is disabled
 - physical or mental impairment
 - substantial and long term effect upon
 - normal day to day activities
- Direct discrimination
- Disability-related discrimination
- Duty to make reasonable adjustments

egs adjustment to premises/equipment
 reallocating duties
 transfer/redeployment
 alter work hours
 permit time off for treatment
 retraining
 increased supervision

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