

## **Stress: employer liability**

Occupational stress is increasingly recognised as a cause of serious personal injury in the workplace.

There is plenty of evidence that the modern teaching, research and academic related environment is a stressful one. Even those who have always felt able to cope at work may find that the pressures and demands made on them are such that they gradually find it more difficult to manage. Individuals who have always regarded themselves as being of a robust nature can fall ill and suffer a serious mental breakdown.

In some instances, the employer may be legally responsible if this happens. However, obtaining legal redress is difficult and often stressful in itself. The legal process can take years and the result is invariably uncertain.

As a trade union, UCU's aim is to ensure that injuries brought on by occupational stress are prevented or reduced by raising awareness of the factors that potentially give rise to personal injury and the steps which individuals and branches can take to ensure that the employer addresses the causes of workplace stress before injury results.

### **What is stress?**

'Stress' is not a medical condition. Rather, it is a description of a state of affairs in which demands are placed on a person. Pressure is part and parcel of work and can have a positive effect that helps to keep us motivated. But excessive pressure can lead to dangerous levels of stress, which undermines performance, is costly to employers and can make people ill. The Health & Safety Executive define stress as 'the adverse reaction people have to excessive pressure or other types of demand placed on them'.

To enter the legal arena a stress case must be one where the excessive occupational stress has caused a clinically well-recognised mental illness. Mere feelings of unhappiness or dissatisfaction are insufficient. Expert medical evidence is usually required. The fact that a GP has provided a sickness certificate giving 'stress' as the reason for being unfit for work will not usually provide sufficient evidence of the existence of a mental illness.

### **The employer's liability**

An employer will only be liable in the civil court for a stress-related personal injury if the following components are present:

- the existence of a duty of care

- a failure by the employer to take the care which can reasonably be expected in the circumstances, ie foreseeability
- injury resulting from that failure.

## **Foreseeability**

While the first of the above bullet points is a given, the second is more difficult. Foreseeability is not a general concept. It must be considered by the employer in relation to each individual employee accepting that some are more resilient than others to the pressures in the workplace.

A number of factors have been identified which may assist to determine whether it is reasonably foreseeable that pressures at work may cause injury. These include:

- the nature and amount of the work
- how demanding the work is
- the levels of sickness or absenteeism in the workplace
- signs that others are falling ill with workplace stress-related injury
- whether the employee concerned has a particular vulnerability, for example has suffered a breakdown in the past
- complaints or warnings by or on behalf of the employee that unless something is done the employee will fall ill
- whether there are any other signs from the employee of impending harm.

Once a risk to health has been identified the employer must act to prevent the injury occurring. Steps that an employer can take include:

- transferring the employee to less stressful work
- giving the employee assistance to do the work
- giving the employee a 'buddy' to encourage confidence.

The employer must only do what is reasonable in the circumstances. An employee who willingly carries on regardless of the risk to their health and knowing that the causative factors cannot be alleviated by the employer may have no redress later on in they actually fall ill.

## **Causation**

The cause of the breakdown must be the workplace stress. But often there will be more than one source of stress, eg family problems or bereavement. In such cases, the court must try and separate out the various causes to identify the injury caused by the employer's breach.

In some individuals a pre-existing condition may mean that some form of breakdown was inevitable, in which case the assessment of damages will have to take into account the pre-existing condition when fixing compensation.

Not all stress is brought on by breach of duty. Unlawful discrimination can result in injured feelings and in serious cases a mental illness. Claims for compensation brought on by discrimination can only be brought in the employment tribunal.

## **What to do if you think you are suffering from work-related stress**

Read carefully the UCU factsheet on *Dealing with stress at work*, which you can download from the UCU members' health and safety page at [www.ucu.org.uk/safemembers](http://www.ucu.org.uk/safemembers).

Always tell someone if you think your health is suffering from workplace stress or stress brought on by external factors. Visit your GP and tell him or her how you are feeling and what you think the causes are.

If the causes are in the workplace tell your union representative and your line manager. Make sure that you document what you tell management and obtain their response in writing. It is not your job to manage, so you don't have to suggest solutions, but you must be receptive to suggestions from management. Sometimes basic help with time management will be enough, but if the problem goes deeper it may require more complex solutions. It may require your employer to carry out a formal risk assessment.

UCU has developed detailed advice to assist local branches with stress risk assessment and may be able to help tackle individual stress pressures collectively but tackling their causes – and preferably before they become too serious

You may find the UCU supported College and University Support Network very helpful. It provides an excellent counselling service for UCU members experiencing stress, among other issues. More details of the service can be accessed at [www.cusn.info](http://www.cusn.info).

**Whatever you do don't suffer in silence!**