

## Stress at work update

### What are your rights?

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**Stress at work is highlighted in these times of economic turmoil. But what are your rights and what practical steps can you take?**

A report this week from the Chartered Institute of Personnel Development highlights that public sector workers are 3 times more likely to suffer with time off work for stress than private sector employees. This is against the background of other studies that has shown 1 in 5 of people in the UK suffers with work related stress, with half a million people reporting that they have become ill as a result.

#### The legal obligations of an employer

So what exactly are the legal obligations of your employer in relation to stress at work? Well there is no specific law aimed at workplace stress, but employers do have duties under the Health and Safety at Work Act to ensure the health, safety and welfare of their staff. In addition, employers have duties under common law (non-statute) to take reasonable steps to ensure your health and safety at work.

Typical causes of work-related stress are an overload of work, bullying, lack of support and a bad working environment. In some cases, your stress can be caused by outside influences such as bereavement, relationship issues or a disability. A disability may be yours, or someone for whom you have caring responsibilities. Whatever the cause of your stress, you do need to bring the stress that you are under to the attention of your employer.

Unless it is obvious, your employer will otherwise be likely to raise a successful defence if they can show they were simply not aware of the stress you were under.

#### Your legal right to make a stress claim

You do have the right to make a legal claim for stress against your employer. These are not easy claims to bring, but they do happen and many are successful. A claim would generally be either for personal injury or constructive dismissal. A personal injury claim would arise from the duty of care that employers have to their staff and to provide a safe system of work. You would have to have suffered a recognised psychiatric illness, such as clinical depression, and you would have to show this was caused by stress at work and no outside factors. You would also need to show that it was reasonably foreseeable by your employer that you would develop a mental illness and in turn this means (as stated above) that your employer will need to have been aware of your worsening condition. You should bear in mind, however, that an employer is usually entitled to assume that an employee can withstand the normal pressures that the job entails and is entitled to accept what he is told by an employee at face value (unless there is good reasons to the contrary).

Many employees "contract out" of the Working Time Regulations and work in excess of 48 hours a week. This in itself is usually not enough to bring a claim against an employer for stress on the basis that such stress was reasonably foreseeable by that employer.

An additional claim you can bring is for constructive dismissal (based on your resignation). You would have to show that your employer is in breach of the term implied term into every contract to provide a safe system of work. Usually, there is also a breach at the same time of the further implied term of mutual trust and confidence between employer and employee. The breach must be sufficiently serious for you to resign and you would normally be expected to lodge a grievance first. If on the other hand your employer gets in first and dismisses you because you are stressed, you may have a claim for unfair dismissal.

If your stress is caused by your disability, giving rise to a "protected characteristic" under the new Equality Act, then you have added protection. In these circumstances, you may be able to make a claim for disability discrimination if your employer fails to make reasonable adjustments in the workplace aimed at alleviating your stress.

#### Practical steps you can take to resolve your stress at work

The best way that you seek to resolve matters is to approach your line manager or HR. Do try and keep a written record of your concerns, such as in an email. This will be invaluable to refer back to if you need it at a later stage- otherwise your employer could deny any knowledge of your condition. When approaching your employer, examples of what you could ask would be:

- To see if it possible to request a flexible working arrangement.
- Seeking clarification of your exact roles and responsibilities. This may not be documented, so you can ask for this.

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- Asking your employer if it is possible to have training or support due to your overload of work.
- Seeing if new channels of communication or reporting structure can be set up. Regular work meetings may help here.
- Seeking guidance on the grievance process. Many line managers will want to pull out the stops to resolve matters prior to your lodging a formal grievance.
- It may be that you can agree a mutual termination of your employment on suitable financial terms. It is best that you do not take this particular step until you have first taken professional advice.

#### What are my rights when I am off work for long term stress?

Quite often, there is a contractual right to sick pay whereby the employer spells out what the employee is to receive when sick and over what period. In the absence of a contractual provision, employees are entitled to receive Statutory Sick Pay ("SSP") from the employer. Some employers have insurance set up for their employees that will result in their salary being maintained in whole or in part when they are off on long term sickness.

Where there are cases of the employee's long term ill-health, which makes the future performance of the contract of employment impossible, the contract may be considered to have been "frustrated" and the employee will in these circumstances have his contract terminated with no recourse against the employer. This position is extremely rare.

If an employer is to safeguard itself against a claim for unfair dismissal, he should go to some length to find out the current medical position which would involve consultation with the employee's medical advisors and possibly have an employee examined. If the employer can show that it has taken these necessary steps and has properly informed itself of the state of employee's state of health and prognosis and following such prognosis the employer makes a perfectly reasonable decision to dismiss the employee, the employee is likely to have little come back.

If the ill-health or sickness was caused by the employer's actions, this may well have a bearing on whether the ultimate decision to dismiss is deemed to be fair or unfair.

#### Conclusion

I have seen a significant rise in stress at work issues over the past few years. Whether due to cutbacks by employers as a matter of necessity in these harsh economic times, or a simple recklessness by the employers as to the well being of their staff, thousands of individuals are going through turbulent times.

Difficulties further arise because an individual who is suffering may not wish to make too many waves at work, otherwise they may soon find themselves out of favour and out of a job.

There are ways and means of dealing with stress issues as hopefully will have been highlighted above. You should not forget that you ultimately do have rights of redress in law and you should not be afraid to use this. If your stress causes you long term illness (as I have seen with many people), this will affect your ability to find new work. Your absence due to stress may also have to be disclosed to your new employers.

If you cannot resolve matters direct with your employer, you cannot soldier on, and you don't wish to make a legal claim, then you may have no option but to leave. You are best seeking legal advice before you do so, however, as there are many occasions where your employer could be receptive to a mutual departure of your employment upon terms which include a financial package and an agreed job reference.

Above all, don't suffer alone.

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