

The UK National Work-Stress Network, Conference 2010

PERSONAL INJURY CLAIMS FOR OCCUPATIONAL STRESS & HARASSMENT

Iain Shoolbred, Associate Solicitor

Ronan Hynes, Solicitor

Birmingham Workplace Illness Team,

Irwin Mitchell LLP

irwinmitchell ^(IM)
solicitors

Session Plan:

- Introduction
- The law on claims for personal injuries caused by stress at work
- Case Studies
- Break
- The law on claims for harassment
- The overlap between personal injuries and employment law
- Your experiences
- Questions

Introduction: How big is the problem of stress at work?

- HSE estimates 425,000 employees suffered from work stress that they felt impacted upon their health in 2009/10.
- HSE estimates 9.8 million working days lost in 2009/10.

Introduction: Why is the problem not taken more seriously?

- Bottom line – because there has been only a small prospect of facing claims from employees.
- Compare with the effectiveness of ‘6 pack’ regulations of 1992:
 - The Management of Health & Safety at Work Regulations
 - Manual Handling Operations Regulations
 - Display Screen Equipment (DSE) Regulations
 - Workplace (Health, Safety and Welfare) Regulations
 - Provision and use of Work Equipment Regulations
 - Personal Protective Equipment (PPE) Regulations

Personal Injuries Claims for Stress at Work

- Walker v Northumberland County Council (1995)
- Hatton –v- Sutherland (2002)
- The 16 ‘Hatton Propositions’.

Are the Hatton Propositions Still Good Law?

Proposition 3 - An employer is usually entitled to assume that the employee can withstand the normal pressures of the job...

&

Proposition 6 - The employer is generally entitled to take what the employee tells him at face value.

Are the Hatton Propositions Still Good Law?

- Proposition 11 - An employer who offers a confidential advice service (with potential for referral to counseling & treatment) is unlikely to be found in breach of duty.

Are the Hatton Propositions Still Good Law?

- Proposition 15 - Where the harm has more than one cause, the employer should only pay for that proportion attributable to him, unless the harm is truly indivisible.

Are the Hatton Propositions Still Good Law?

- Proposition 4 - There are no occupations which should be regarded as intrinsically dangerous to mental health.

Are the Hatton Propositions Still Good Law?

Proposition 2 - The injury to the particular employee must have been reasonably foreseeable.

&

Proposition 7 - It must be plain enough to the reasonable employer to realise they should do something about an impending harm to health.

Summary: What an employee needs to prove:-

1. Their employer owed them a duty of care;
2. They suffered a recognised psychiatric disorder;
3. The employee's psychiatric disorder/illness was foreseeable to their employer;
4. The employer was in breach of their duty to the employee in some way;
and
5. The employee must show that their employer's breach of duty caused or materially contributed to the psychiatric illness that the employee suffered.

CASE STUDIES

Discuss in groups

Break

BREAK

Claims for Harassment.

- The right to bring this claim comes from the Protection from Harassment Act 1997.
- Anti-stalking legislation
- Contains both criminal and civil sanctions.

Claims for Harassment.

There must be conduct which occurs on at least two occasions;

Which is targeted at the victim;

Which is calculated in an objective sense to cause alarm or distress;

Which is objectively judged to be oppressive and unacceptable;

What is oppressive and unacceptable may depend on the social or working context in which the conduct occurs; and

A line has to be drawn between conduct which is unattractive and unreasonable, and conduct which has been described in various ways: 'torment' of the victim, 'of an order which would sustain criminal liability'.

Claims for Harassment.

- Majrowski –v- St. Thomas NHS Trust (2006)
- Employer held Vicariously liable for the acts of their employee.

Recent Cases – How Serious Does the Conduct Have to Be?

Conn –v- Sunderland City Council (2008)

Ferguson –v- British Gas (2009)

Dowson & 5 Others –v- Chief Constable of Northumbria Police (2010)

Why Claim for Harassment rather than Stress at Work?

- Limitation.
- Foreseeability requirement.
- Level of compensation.
- Diagnosis.
- Claim for both in some circumstances.

Can an employee bring a claim for both a personal injury and in the Employment Tribunal

- Unfair Dismissal & Wrongful Dismissal
- Discrimination

DISCUSSION & QUESTIONS