

Stress claims

Employers frequently have to deal with issues of ill health, and quite often these issues will have a stress element to them.

Back in 2002 the case of *Hatton v Sutherland* set out guidelines for determining employer liability for psychiatric injury caused by stress at work. Broadly, this breaks down as follows:

- **Forseeability** - the harm suffered by the employee must be reasonably foreseeable. Forseeability will depend upon what the employer knows (or should know) about the individual in question. Unless an employer is aware of a particular problem, it will usually be entitled to assume that an employee is able to withstand the normal pressures of work;
- **Breach of Duty** - to trigger the obligation to take action, the indications of likely harm to the employee must be clear enough for the reasonable employer to realise that something should be done. Where an employer offers a confidential counselling service, it is unlikely to be in breach of its duty;
- **Causation** - the employee must show that a breach by the employer of the duty owed to the employee caused, or materially contributed to the injury suffered;
- **Apportionment** - when assessing damages for an injury caused, the court will take into account pre-existing disorders or vulnerability and the possibility that the employee would have succumbed to a stress related disorder in any event.

In broad terms, the above principles are accepted as being relatively difficult for employees to satisfy in cases where the employer has taken an employee's condition seriously.

Recently, the above guidelines have been considered and applied by the Court of Appeal in the case of *Dickens v O2*.

Ms Dickens had been promoted to the role of management accountant, but had not been given any formal training. She quickly found the role to be very demanding and frequently complained to management about the fact that she was overloaded with work and that she was finding it difficult to cope. Ms Dickens was referred to the employer's confidential counselling service. Subsequently Ms Dickens asked for a sabbatical on the basis that she was drained of all energy and was stressed out. A further complaint was made by Ms Dickens in her appraisal, and although management tried to involve occupational health, no contact was made with Ms Dickens by them. Ms Dickens was eventually signed off work and after a period her employment was terminated. Ms Dickens brought a claim for personal injury and

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sought damages for injuries that she had suffered due to stress at work.

The Court of Appeal held that O2 were largely responsible for Ms Dickens' condition, and using the headings above, made the following points:

- **Forseeability** – Ms Dickens had been very clear with O2 as to the fact that something was wrong, and had told her line manager that she did not know how much longer she could continue to work before she fell ill. As a result Ms Dickens had established that the condition that she subsequently suffered from was reasonably foreseeable to the employer;
- **Breach of Duty** – O2 sought to rely on the point made above in relation to the provision of a confidential counselling service. However, the Court held that the mere suggestion that Ms Dickens undertake confidential counselling was not enough for the employer to escape a breach of duty in this case, especially given that Ms Dickens was already in receipt of medical advice from her GP;
- **Causation** – O2 had been warned on a number of occasions by Ms Dickens as to her mental state. By failing to take any action, or any adequate action in relation to these warnings the necessary causal connection between the breach and the illness was established.

Employers should continue to remain alive to stress issues in the workplace. A failure to spot and deal with stress can result in substantial liabilities for employers. Where an

employee complains that they are over-worked and suffering from stress, action should be taken to investigate the situation, determine whether the employee has a genuine concern, and, if so, what action should be taken.

For further details on this topic, or any employment law issue that you may be facing, please contact Mark Minns.

23rd November 2008

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