

PERSONAL INJURIES CLAIMS* FOR WORKPLACE STRESS



Many employees said goodbye to a defined working day with advancements and developments in technology. Smart phones, email and social media have made it impossible for workers to unplug and bring their working day to an end. The culture of organisations in how they provide a 24/7 service to their clients / customers also makes it difficult to bring an “end” to the working day. How many of you have told your partner, husband, wife, family or friends, “I’ll be leaving work early today!” and what you actually mean by “early” is “on time”?

Long hours, client/customer demands, social media, unrealistic targets/deadlines and the culture of certain workplaces does lead to stress. However, it is important to note the difference between what is known as occupational stress and workplace stress. Occupational stress is not an actionable wrong. It is stress associated with the job that we all experience at some stage of our working lives. You cannot bring a personal injury* case for occupational stress. Workplace stress, however, is different. The Health and Safety Authority has defined workplace stress as stress caused or made worse by work. It is an imbalance between the demands of the job and the working environment and a person’s capacity to meet those demands.

Workplace stress can have a negative impact on an employee’s health and lead to serious illness. A recent survey revealed that mental health issues are now the most common workplace illness with two out of five workers suffering from stress and anxiety. Workplace stress can manifest itself in psychological symptoms such as anxiousness, nervousness, fear, racing thoughts, upset, feeling low. However, it can also manifest itself in physical symptoms such as heart palpitations, raised blood pressure, poor sleep pattern, stomach

issues. These are just some examples. Ignoring these symptoms of workplace stress can lead to serious and permanent injury*.

The Safety, Health and Welfare at Work Act 2005 places a duty on employers to ensure the safety, health and welfare of its employees so far as is reasonable practicable. Stress is a hazard which can lead to injury*. However, a claim* for personal injuries* arising out of workplace stress is not straight forward. Before embarking on a personal injuries* case arising out of workplace stress, an employee needs to ensure the following: -

1. There must be an injury* to health. If this is not a physical injury*, it needs to be a recognisable psychiatric injury*. Only a specialist medical practitioner such as a psychiatrist can make this prognosis.
2. The injury* must be attributable to the workplace stress, e.g. excessive demands made of the employee such as excessive work hours or unrealistic targets and deadlines. Again, only a specialist medical practitioner such as a psychiatrist can determine the causation of the injury*.
3. The workplace stress must be wrongful and actionable in law, e.g. there must be some form of negligence or breach of duty. When determining if the behaviour towards the employee was wrong and actionable in law, the court will adopt an objective test, i.e. would any reasonable person deem this behaviour as wrong and actionable in law? In the case of *Berber -v- Dunnes Stores [2009] 20 ELR 61*, the Supreme Court set out the following test: -

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1. The test is objective;
 2. The test requires that the conduct of both employer and employee be considered;
 3. The conduct of the parties as a whole and the cumulative effect must be looked at;
 4. The conduct of the employer complained of must be reasonable and without proper cause and its effect on the employee must be judged objectively, reasonably and sensibly in order to determine if it is such that the employee cannot be expected to put up with it.”
4. It must have been likely that in all of the circumstances, the employer should have foreseen that the employee would be harmed. An employer is entitled to assume that an employee can cope with the pressures of

the job unless they are aware of some vulnerability, e.g. previous complaints about deadlines, excessive working hours, unusual lengthy absences from the workplace.

5. The employee must be within the 2 year statute of limitation period within which to bring the claim*.

Each of the above elements must be met before embarking on a claim* for personal injuries* for workplace stress. An employee suffering with injuries* as a result of workplace stress should give great consideration to the advice of both their legal advisors and medical advisors before initiating such a claim. They are difficult cases to win with no guarantee of success. They are also costly cases. In addition, a medical team might find that litigation will do more damage than good to the employee's health.

The solution to the problem may not be entirely a legal solution. However, good employment law practice in organisations can help to keep workplace stress at a minimum. Ensuring that employees receive their daily rest periods between finishing and starting work, rest and break periods while at work and weekly rest periods in accordance with the Organisation of Working Time Act is an important and simple health and safety measure that should be enforced by organisations. In addition, it is important for employees to take their full annual leave entitlements. A risk assessment will also help to identify any stressors in the workplace and measures can be put in place to tackle same. Unfortunately, not all employers are good employers. In those circumstances, it is extremely important that employees prioritise their mental health at work. If you are suffering with stress, it is important to report it to your employer and talk to your GP before it becomes more serious. Sometimes, employees may just need a break from work and a problem shared is a problem halved. However, if the workplace stress is manifesting itself in serious symptoms with extensive certified sick leave from work, then you should speak with a solicitor specialising in work related personal injuries*, as soon as possible.

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

****In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**