

Stress at work

A factsheet for UNISON members

Introduction

Stress at work is a major problem in the workplace. It causes long-term incapacity to thousands of workers; millions of working days are lost every year.

If you or a colleague believe you are suffering from stress at work, there are things you can do to try and deal with the problem.

Prevention

This is number one. If you or one of your colleagues is suffering from stress at work the best advice is to tackle the problem before it causes real harm. Speak to your UNISON health and safety representative who can raise it with your managers. Ask your safety rep to check if your employer has carried out a risk assessment. Your safety rep can also check if your employer has a policy for dealing with occupational stress and whether there are others affected as well as you.

UNISON is working to ensure that pressure is kept on employers to reduce stress in the workplace and, where appropriate, to provide assistance and counselling.

Employers' duties

Your employer has a duty to provide a safe place and system of work. Failure to do so may amount to negligence by your employer. Under the Management of Health and Safety at Work Regulations, employers must assess the nature and scale of risk to health in the workplace and ensure there are proper control measures in place. This applies to the risk of stress as well as other workplace hazards.

Health and Safety Executive guidelines

The Health and Safety Executive (HSE) have produced guidance on stress at work in several publications. It is recognised that stress in the workplace is both predictable and preventable.

Employers should ensure good management in terms of competence, consistency and two – way communication with staff. Employers should make sure: management has the right attitude' to stress; that stress is understood and not seen only as an individual's problem; and that they are committed to addressing stress.

Employment tribunals

In some circumstances, occupational stress may be caused as a result of some failure by your employers to deal with you fairly at work. It may be that your employer has discriminated against you, for example on the grounds of sex, race or disability. In some cases it is possible to prove that the way you have been treated amounts to a breach of your contract of employment. This may justify you in treating that contract as at an end and you may be able to claim that you have been unfairly dismissed on the grounds of constructive dismissal.

If you are able to prove your case, you may be entitled to compensation from an employment tribunal. Proving constructive dismissal is however very difficult and successful cases are rare.

If you believe that these circumstances apply to you, you should contact your UNISON branch immediately. They will be able to assist and if necessary refer your case onto the region, who will then deal with your case or refer it to UNISON's lawyers if appropriate.

Remember, you have to act promptly to bring a claim to the employment tribunal. A claim must normally be registered within three months of either the act of discrimination or the 'effective date' of termination of employment.

Legal action for personal injury

UNISON has led the field, both in prevention and in securing compensation. The first ground-breaking case for stress at work was taken by UNISON for one of our members in the case of Walker -v- Northumberland County Council (1995). The courts have heard many cases since that time but only a small proportion have succeeded. It is very difficult to win personal injury cases of this type. The courts require, among other things, proof that an employer could have foreseen that an employee was likely to suffer from a psychiatric illness as a result of their situation at work. This is the most common reason why cases fail.

Pursuing a case through court proceedings can be extremely stressful and cause you further anxiety. Legal action should always

be a last resort. It does not make you better. Action can only start once the damage has been done.

If you believe you may have such a case you need to contact your UNISON branch immediately. A special procedure needs to be followed to request legal assistance for such a claim. In the first instance you should complete a stress form with the help of your branch. This will then be sent to our lawyers for advice.

Time limits

Court proceedings in personal injury cases must normally be taken within three years of the injury. Time limits are strictly adhered to. The time limit for stress cases usually runs from the date that the injured person knew or should have known that they were suffering from stress as a result of their work. In addition a longer time limit of six years applies to some bullying/harassment claims (see over).



Hurdles to clear when pursuing a personal injury claim

UNISON continues to try and push the boundaries of the law in the right direction, but stress cases are very difficult to prove.

Although the law places duties on employers there are a number of hurdles that an employee has to clear to successfully take a personal injury case for stress.

Injury: stress is not enough. It is necessary to prove that the injury is a clinically recognisable psychiatric condition.

Negligence: although the employer will have a duty of care for the health of their employee, there is often difficulty proving the employer failed to take appropriate action and that action would have prevented the injury.

Medical causation: employers will defend the claim by saying that illness has not been caused by work but by personal circumstances or characteristics. They will review all medical records (even those prior to your work), and have those records reviewed by a consultant psychiatrist, in order to try to prove that there were factors causing stress other than work. The claim will only succeed if there is clear evidence to show not only that a psychiatric condition has been suffered but also that the injury has been caused by the employer's negligence.

However, often the most difficult hurdle to overcome is to be able to prove the psychiatric illness suffered was clearly **foreseeable** to your employers. Your employers will not be expected to know that you were likely to suffer from a

Claims for bullying and harassment

stress related condition because of your work situation unless you tell them that this is the case. The majority of successful cases have involved an employee who has previously been absent from work due to stress. This absence will then put the employer on notice that an employee may suffer a similar breakdown if steps are not taken to improve the working conditions.

Unfortunately, in most situations where members face stress at work it is not possible to bring a successful personal injury case because of these hurdles.

In July 2006 the House of Lords gave their decision in the case of *Majrowski v Guys and St Thomas' Hospital Trust*. This case stated that an employer could be responsible for acts of harassment or bullying committed by a fellow employee. As a result an employee who has been the victim of bullying or harassment at work may be able to make a claim under the Protection from Harassment Act 1997.

However, to succeed in a claim:

- the harassment must be serious (to the extent it can be viewed as criminal conduct)
- it must have occurred on more than one occasion
- it must be specifically targeted at the victim
- the perpetrator must know that his or her actions are sufficiently serious to cause distress to the victim

Return to work

- those actions must be such that a reasonable person would think they amounted to harassment.

The Act allows you to bring a claim within six years of the date on which the first act of bullying occurred.

Importantly, it is not necessary to prove that you have suffered a recognised psychiatric injury in order to make a successful claim.

However, claims under this Act are also difficult to pursue. They will only succeed where a number of very serious incidents of bullying or harassment have taken place.

If you have been off work because of stress, before returning to work your employers would usually be expected to find out whether or not you are fit to return to work, in what capacity and whether any modifications are required before you return.

If you have been off work for a long period it may well be appropriate to phase the return to work so that your progress can be reviewed once you are back at work. The advice of your treating doctor should be followed. If you are in this situation seek advice and assistance from your local branch or health and safety representative.

What should I do if I am suffering stress at work?

Remember, above all, if you are suffering from stress at your workplace, then you are probably not alone. It is likely that your colleagues are also experiencing the same problem. UNISON is there to help you whenever it can. Raise your concerns with your UNISON health and safety rep. They can remind your employer of their duties and the need for risk assessment under the Management of Health and Safety at Work Regulations.

The health and safety rep can also remind your employer of the duty to review their risk assessments where stress problems exist and draw your employer's attention to the HSE's guidance. Health and safety reps have a legal right to be consulted and informed of action your employer takes on stress at work as well as all other health and safety concerns.

In addition, if the problem continues industrial solutions are often the best way forward so contact your branch for assistance. Going through the courts will not give you back your health; it will not restore you to a job in a stress-free environment. It may, in a very limited number of cases, provide some compensation. However, the majority of people affected by stress at work will not be helped by the courts.

Contact us

For more information or to join
UNISON visit our website at

www.unison.org.uk

or call **UNISONdirect** on

0845 355 0845 (voice) or

0800 0 967 968 (text)

Lines open from 6am to midnight,
Monday – Friday and
9am to 4pm Saturday

