

STRESS AND THE LAW

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HSE DEFINITION FOR STRESS

- The Health and Safety Executive (HSE) uses the following definition:
- The HSE defines **stress** as 'the adverse reaction people have to excessive pressure or other types of demands placed on them'

No one should leave work at the end of the day, less healthy than they were when they arrived (UK National Work-Stress Network)

TUC Safety Reps Health and Safety Reps Survey 2020/21

Main Hazards of Concern

- Safety representatives were asked to identify the main hazards of concern to workers at their workplace (excluding Coronavirus/Covid-19), and to identify the top five of their concerns in order of importance. All those mentioned as being in respondents' top five were aggregated to provide a table of 'top-five hazards' across all survey respondents which resulted in the following:
- Stress 70%
- Bullying & Harassment 48%
- Overwork 35%
- Harassment/Violence/Verbal Abuse 31%
- Slips, Trips & Falls 30%
- Long Hours 29%

Stress, Fact and Fiction

- Stress can be a good thing? (true or false)
- **False -there is a difference between pressure, which can be of benefit, and stress, which occurs when the pressure becomes unmanageable**
- If the stress injury is not defined as a 'recognised psychiatric injury' as defined by ICD-10 (International Classification of Mental and Behavioral Disorders); Clinical Descriptions or Diagnostic Guidance, and DSM-IV (Diagnostic and Statistical Manual of Mental Disorders) a claim is likely to fail (true or false)
- **True- ICD-10 (International Classification of Mental and Behavioral Disorders); Clinical Descriptions favored in the UK and Diagnostic Guidance, and DSM-IV (Diagnostic and Statistical Manual of Mental Disorders) favored in the USA are the two main text books that legal practitioners and medical experts rely on in stress cases**

STRESS BAD FOR BUSINESS, BAD FOR WORKERS, LOSE-LOSE

- **Individual Symptoms**

- **Irritability**
- **Depression**
- **General aches and pains**
- **Compulsive thoughts about work**
- **Feeling tense or tearful**
- **Mouth ulcers**
- **Palpitations and headaches**

- **Organisational Symptoms**

- **Increased sickness absence**
- **Increased staff turnover**
- **Reduced staff performance**
- **Reduced morale and loyalty**
- **Increased overheads**
- **Costly litigation**

Fines should 'fit the crime' Killing people v financial irregularities

British Airways was fined a total of **£121.5m** for illegally price-fixing fuel surcharges. In 2005 Transco received the biggest ever fine for a health and safety offence. In 1999 the Larkhall explosion killed four people. The courts wanted to send out a strong message to employers and so fined Transco...

- *How much do you think Transco was fined?*
 - £200m
 - £180.5m
 - £160m
 - £50m
 - £30.5m
 - £15m
 - **£15m**
 - Conkers bonkers-Health and Safety gone mad!

Safety Reps Rights

- Health and Safety Law

- The **Health and Safety at Work etc Act 1974** requires employers to protect the health, safety and welfare at work of their employees and to provide a safe working environment.

- The **Management of Health and Safety at Work Regulations 1999** requires employers to carry out an assessment of the risk to their employees' health and safety and take preventative and protective measures to deal with the risks identified.

- The **Safety Representatives and Safety Committees Regulations 1977** allow safety reps to investigate sources of stress, such as bullying and harassment.

What's the matter? - A complaint should not only be about stress but also about the specific aspects of work which are causing difficulty

- **Contractual Obligations**

- *It is an implied term on every contract of employment that the employer will fulfil his/her duty of care*

- **Health and Safety at Work 1974**

- *Section 2 places a duty upon all employers to ensure the health (including mental health), safety and welfare of all employees*

- **Management of Health and Safety at Work Regulations 1999**

- *Requires employers to carry out an assessment of the risk to their employees' health and safety and take preventative and protective measures to deal with the risks identified*

- **HSE Stress Management Standards- for work-related stress**

- *Control, Demands, Relationship, Change, Role, and Support*

HSE Stress Management Standards

- HSE has identified six “risk factors” that can be used to identify the causes of work-related stress
- These are:
- The demands of the job
- Control over the work
- The support from managers and colleagues
- **Relationships at work (Bullying)**
- Role in the organisation, and
- Change and how it is managed

HSE Stress Management Standards

- **Demands – such as?**
 - Workload, work patterns, working environment
- **Control- such as?**
 - How much say the person has in the way they work
- **Support – such as?**
 - Encouragement sponsorship and resources provided by the organisation, line management and colleagues
- **Role- such as?**
 - People understand their role- the organisation ensures that they do not have conflicting roles
- **Change- such as?**
 - How the organisational change (large or small) is managed and communicated in the organisation
- **Relationship- such as?**
 - Promoting positive working to avoid conflict and dealing with unacceptable behaviour

Five steps to a risk assessment

- **Identify the hazards**
 - **Assess the risks**
 - **Control the risks**
 - **Record your findings**
 - **Review the controls**
- **If you employ five or more people you have a legal duty to record the significant findings of your risk assessment. You will also need to share the results of your findings with your employees. Source HSE Website**

Risk Assessment Part 1 & Part 2

- Regulation 3 requires every employer to make a 'suitable and sufficient' assessment of the health and safety risks to employees- the significant findings must be recorded if 3, 5, 10, 20? or more are employed
- 5 (How would you know the findings of the risk assessment?)
- Regulation 10 requires employers to give employees comprehensible and relevant information on the health and safety risks identified by the assessment and the protective and preventative measures put in place
- The Management of Health and Safety at Work Regulations 1999

Employers obligations- employers could

- Offer training- including stress management training
- Offer counselling schemes, however
- Although training and counselling schemes assist workers they do not deal with the underlying causes of stress, therefore if possible the causes of stress should be tackled at source

Stress Litigation

- The first reported case concerning workplace stress was in 1909, 1925, 1933, or 1977?
- 1909 Gillespie v Commonwealth of Australia (do you think that this case succeeded?)
- No – the first successful stress litigation case was 1995, 1999, 2001, or 2003?
- 1995 Walker v Northumberland County Council

Health and safety legislation generally used to challenge work related stress injuries is;

The Health and Safety at Work at 1974, and

The Management of Health and Safety at Work Regulations 1999

What percentage of breach of duty cases are successful?

1%

- Julie Winn
- Morrish & Co Solicitors

Why 1%- prove it can you clear the four hurdles

- **Recognised Psychiatric Illness**

medical evidence essential

- **Duty of Care - (culpability/negligence)**

You must prove that there has been a clear breach of the 'Duty of Care' the employer will only be in breach if he has failed to take steps which he could reasonably have been expected to take

- **Causation**

You must prove that the injury was caused by the breach of duty, not simply by the stress itself

- **Foreseeability**

You must prove that the employer knew or should have reasonably foreseen the risk of impending harm to the employee's health

Significant Court Cases

- Walker v Northumberland County Council [1995] IRLR 35 £175,000 compensation- established that the '**Duty of Care**' covered mental as well as **physical injury**
- Sunderland v Hatton [2002] IRLR 263 four cases, two successful two overturned. **The Court of Appeal laid down 16 'practical propositions' to govern stress cases.** The need for risk assessments and the requirement to consult with safety reps was reinforced
- Dickins v O2 Plc [2008] EWCA Civ 1144 Hatton suggested that an employer would only be liable for the psychiatric injury caused by workplace stressors, as opposed to private factors. **Dickens established that an employer is now likely to be liable for the whole loss if it is proven that the breach has made a contribution to the injury ('tipped over the edge')**

SUNDERLAND (CHAIRMAN OF GOVERNORS OF
ST THOMAS BECKET RC HIGH SCHOOL) V HATTON SLIDE 1

- H taught in a comprehensive school in Liverpool from 1980 until 1995
- In 1989 following the breakup of her marriage, she took two months off with depression
- In January 1994 she took a further month off after she was attacked in the street
- Finding it hard to cope with her workloads she started seeing a stress counsellor in August 1994, but did not inform her employer

Depression & stress- stigma- should let them know?

**SUNDERLAND (CHAIRMAN OF GOVERNORS OF
ST THOMAS BECKET RC HIGH SCHOOL) V HATTON SLIDE 2**

- In October 1995 she was signed off work with depression and never returned. H argued that her employer breached its duty of care. **At no point had she complained to her employer about her workloads**
- Do you think that H succeeded in her claim? If so why?
- **Claim unsuccessful. H had never complained that the working environment was a cause of stress- thus her employer was not under a duty to take steps to prevent H suffering a psychiatric injury because such an injury had not been reasonably foreseeable**
- **Depression & stress- stigma- should I let them know?**

Intel Incorporation v Daw [2007] IRLR 335 (slide 1)

- Daw suffered two separate instances of depression after joining her employer (which her employer was aware of)
- Tracy Daw was working 50-60 hours per week- But her reporting lines were confused, and prioritising the demands made upon her by different managers was problematic
- Although Daw had complained about her workload in e-mails, and was found in tears by one of her line managers, no urgent action plan was put in place immediately to reduce her workload

Intel Incorporation v Daw [2007] IRLR 335 (slide 2)

- Daw argued that her employer should have reasonably foreseen that her high workload, which she had persistently complained about, created a reasonably foreseeable risk of psychiatric illness
- Daw's employer argued that it could not be in breach of duty as it provided an employee counselling service and Ms Daw had not made use of this facility
- Do you think that Tracey Daw succeeded in her claim? If so why?
- Daw succeeded - 'The reference to counseling services in Hatton does not make such services a panacea by which employers can discharge their duty of care' (Lord Justice Pill: 2007).

BY LAW ALL EMPLOYERS MUST

- Provide health and safety information, instruction, training and supervision? (true or false)
- **True-stated within the Health and Safety at Work Act 1974**
- Carry out (and act on the findings of) risk assessments for workplace hazards? (true or false)
- **True- stated within the Management of Health and Safety at Work Regulations 1999**
- Employers have a duty to protect the mental as well as physical health of employees? (true or false)
- **True- section 2 of the Health and Safety at Work Act 1974**
- The HSE Stress Management Standards are Guidance/Regulation?
- **Guidance issued by the Health and Safety Executive (2004)**

BY LAW ALL EMPLOYERS MUST

- By Law all employers must provide a confidential counselling service? True or false?
- **False, employers are under no obligation to provide such services**
- The most important common law duty with regard to health and safety is- the?

- **Duty of Care**

Absolute and Qualified Duties – Employers-Should/Could

- All Employers **should** conduct risk assessments (absolute duty)?
- All Employers **could** conduct risk assessments (qualified duty)?
- **ABSOLUTE DUTY –SHOULD**
- Employers with five or more employees **should** have written copies of risk assessments (absolute duty)?
- Employers with five or more employees **could** have written copies of risk assessments (qualified duty)?
- **ABSOLUTE DUTY-SHOULD**
- Under law there are specific regulations on work-related stress and employers **should** include the HSE Stress Management Standards in risk assessments (absolute duty)
- Under law there are no specific regulations on work-related stress however, employers **could** include the HSE Stress Management Standards in risk assessments (qualified duty)?
- **QUALIFIED DUTY-COULD**

Absolute and Qualified Duties – Employers-Should/Could

- Under law there is a specific offence relating to workplace bullying, employers **should** include bullying within risk assessments (absolute duty)
- Under law there is no specific offence relating to workplace bullying, employers however **could** include relationships/bullying in risk assessments (qualified duty)?
- **QUALIFIED DUTY-COULD**
- Safety Reps who work in recognised workplaces **should** be allowed paid time off to carry out their duties (**absolute duty**)?
- Safety Reps who work in recognised workplaces **could** be allowed paid time off to carry out their duties (**qualified duty**)?
- **ABSOLUTE DUTY -SHOULD**

AND..... FINALLY

- In order that people may be **happy** in their **work**, these **three things** are needed: they must be fit for it; they must not do too much of it; and they must have a sense of success in it. **John Ruskin**
- **Social reforms are never carried out by the weakness of the strong; but always by the strength of the weak. Karl Marx**

THE FOLLOWING ARE TYPICAL CASES OF
TELEPHONE MESSAGES RECEIVED BY
HERTFORDSHIRE UNISON BRANCH. IN YOUR GROUPS
CONSIDER HOW YOU WOULD DEAL WITH THESE
PROBLEMS AT WORK. HAVE A SPOKESPERSON
REPORT BACK TO CLASS ON A FLIP CHART.

EACH GROUP HAS 30 MINUTES TO DISCUSS. PLEASE
HIGHLIGHT ANY HEALTH AND SAFETY LEGISLATION
WHICH YOU COULD USE

COLIN FEELS THAT HE IS BEING BULLIED BY A PARENT. COLIN HAS REPORTED THIS TO THE HEAD WHO HAS INFORMED COLIN THAT AS THE PARENT IS NOT AN EMPLOYEE THIS IS NOT A HEALTH AND SAFETY ISSUE AND THERE IS NOTHING THAT THE HEAD CAN DO.

LISA IS A YOUNG NQT AND HAS BEEN WORKING AT HER SCHOOL FOR SIX MONTHS. THE HEAD HAS ASKED HER OUT FOR A ~~DINK~~ ON THREE OCCASIONS WHICH LISA HAS REFUSED. LISA FEELS THAT THE HEAD IS NOW BULLYING HER. WHAT CAN SHE DO?

THERE ARE SEVEN BOYS IN JOHN'S YEAR NINE CLASS WHOM HE IS TERRIFIED TO TEACH. THE BOYS HAVE RECEIVED A ONE DAY EXTERNAL EXCLUSION FOR FIGHTING. THEY SPEND THE FORM TIME SWEARING, FIGHTING, KICKING AND PUNCHING AND LAUGH AT JOHN WHEN HE TRIES TO STOP THEM. JOHN'S HEAD IS PRESSURING HIM NOT TO MAKE A FUSS. WHAT CAN HE DO?

MS GREEN FEELS THAT SHE IS BEING BULLIED BY THREE OF HER COLLEAGUES. SHE HAS REPORTED THIS TO THE HEAD WHO HAS TOLD HER NOT TO BE SILLY AND TO 'GET ON WITH IT'. MS GREEN DREAMS GOING INTO WORK AND WOULD LIKE SOME HELP.





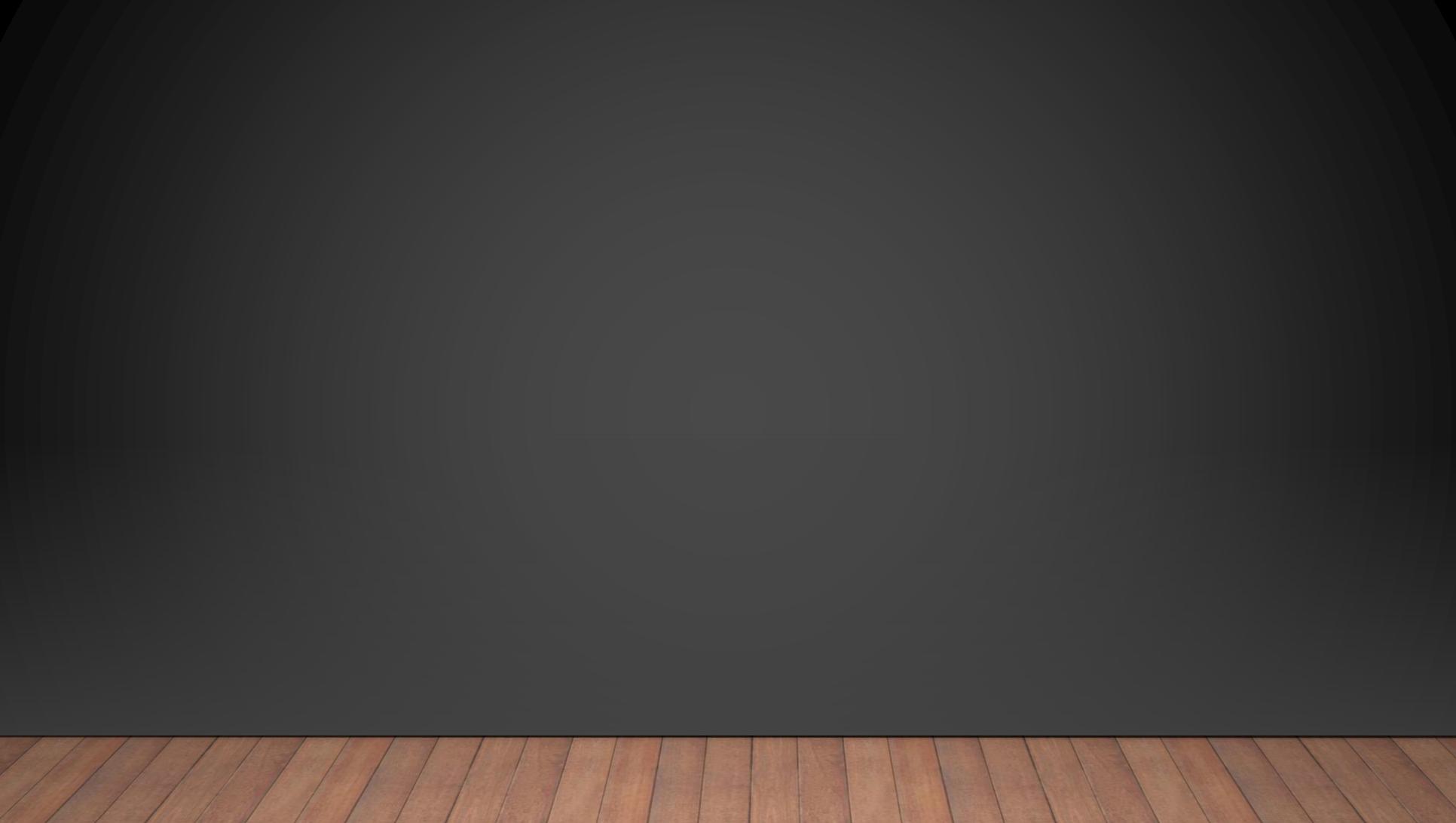
PARTICIPATION IS THE KEY

MEMBERS MAKE A UNION STRONG

LIVE BETTER. WORK UNION.

unions4workers

Unions are powered by the people. Unions 4 Workers



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