



Workplace Stress – an Employee’s Guide*

Workplace Stress Claims are issues which we regularly are contacted about.

This Guide is intended to give some outline particulars as to the principles that are involved in Workplace Stress Claims. We hope this will assist employers avoiding such claims.

It is important to state that the Courts have accepted that bullying is one of the most obnoxious traits in human behaviour.

This is so because it involves a deliberate and repeated course of action designed to humiliate and belittle the victim. It is conduct which is intended to reduce the persons sense of self worth. It may occasion significant pain and suffering to a person so treated occurs.

Bullying can occur at any stage of life. The young can bully the old. The old can bully the young. Those in authority can bully pupils or employees.

It is important to note that bullying, workplace stress and occupational stress are all things which are, from a legal point of view different from each other. At times it may appear that they are the same. The same facts may be relevant.

Occupational Stress

Occupational Stress is not a matter that an employee can sue in the Courts on. The reason for this is that the Courts have held that the Occupational Stress is something that every employee may experience at some stage in his or her working life. It may occur for reasons quite different from and unrelated to bullying.

Workplace Stress

It may appear that occupational stress and workplace stress are the same. They are not. Workplace stress is a matter which an employee can sue on.

It can be the result of behaviour which falls far short of bullying. It can be the result of negligence where excessive demands are made on an employee or where complaints about short comings in the workplace go unheeded. It lacks however that degree of deliberateness which marks out bullying.



The Legal Definition of Bullying

The legal Definition of bullying is set out in the Industrial Relations Act 1990 (Code of Practice Detailing Procedures for Addressing Bulling in the Workplace) (Declaration) Order 2002 S.I NO 17 of 2002 as,

“Repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place or work and/or in the course of employment which could reasonably be regarded as undermining the individual’s right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but, as a once of incident, it is not considered to be bullying.”

Therefore bullying involves repeated inappropriate behaviour.

What is the Test of Workplace Stress

The test that was laid down in relation to what workplace stress is were set out in the case of Barber –v- Dunnes Stores [2009] E.L.R. 61. This Decision adopted the practical view set out from a UK case of Hatton –v- Sutherland [2002] 2 All E.R. Page 1 as follows,

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1. The ordinary principles of employer’s liability apply.
 2. The threshold questions whether the kind of harm to the particular employee was reasonable foreseeable this has two components (a) An injury to health (as distinct from occupational stress) which, and (b) is attributable to stress at work (as distinct from other factors)
 3. Forseeability depends upon whether the employer knows (or ought reasonably to know) about the individual employee. Because of the nature of mental disorder it is harder to foresee than physical injury, but may be easier to foresee in a known individual than in the population at large. An employer is usually entitled to assume that the employee can withstand the normal pressures of a job unless he knows of some particular problem or vulnerability.
 4. The employer is generally entitled to take what he is told by his employee (including what he is told by the employee’s medical advisor) at face value unless there is good reason to think to the contrary.



5. The indications of impending harm to health arising from stress at work must be plain enough for any reasonable employer to realise that he/she should do something about it.
6. The employer is only in breach of the duty if he/she has failed to take the steps which are reasonable in the circumstances, bearing in mind the level of the risk of harm occurring, the gravity of the harm which may occur, the cost and practicability of preventing it, and the justification for running the risk.
7. An employer can only reasonably be expected to take steps which are likely to do some good.
8. If the only reasonable and effective step would have been to dismiss or demote the employee the employer will not be in breach of duty in allowing a willing employee to continue on the job.
9. In all cases it is necessary to identify the steps with the employer both could and should have taken before finding him in breach of his duty of care.
10. The claimant must show that the breach of duty caused or materially contributed to the harm suffered. It is not enough to show that occupational stress has caused the harm.”

What Should an Employee Do?

If you as an employee believe that there is workplace stress or bullying the first thing is to look to your Contract of Employment. You should look to see if there is an internal grievance procedure. If there is an internal grievance procedure you should use that procedure. If you believe that you are being bullied or suffering from workplace stress, caused by your employer, you should seek medical advice from an appropriate qualified Medical Practitioner. This may involve more than just going to see your local GP but at a minimum you should see your GP and take your Doctor's advice. Depending on what is happening legal advice should be obtained.

Why is Bullying and Workplace Stress so Dangerous?

Bullying and workplace stress can result in significant claims against an employer for personal injury.



Conclusion

The firm of Richard Grogan & Associates can assist you in any claim you may have. *In contentious cases a Solicitor may not charge a percentage fee of any award or settlement. Please see our website www.grogansolicitors.ie in the section “Our Fees” for further information.