

HEALTH AND SAFETY SOLICITORS - WORKPLACE STRESS AND BURNOUT – COVID THE STRAW WHICH BROKE THE CAMELS BACK*

Many employees said goodbye to a defined working day with advancements and developments in technology. Covid has just made it worse. 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.

Long hours, client/customer demands, social media, unrealistic targets/deadlines and the culture of certain workplaces does lead to stress and burnout. 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. By this we mean you cannot sue because of it. 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. You can sue for workplace stress. 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. You might call it burnout. So what is burnout. Burnout is:-

- Feeling exhausted or lacking energy
- Feeling distanced from your job or negative towards it
- Feelings of reduced efficiency

Burnout has the potential to have a serious impact on your physical, mental and psychological health.

Now if you think you are suffering from burnout or workplace stress get help. The first place to go is your GP. As Solicitors dealing with these type of cases for us your health comes first.

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 reasonably practicable. Stress is a hazard which can lead to injury/illness. However, a case arising out of workplace stress is not straight forward. The following must be satisfied: -

1. There must be an injury to health. If this is not a physical injury, it needs to be a recognisable psychiatric injury. A specialist medical practitioner such as a psychiatrist can make this prognosis.
2. The injury must be caused by the workplace stress, for example excessive demands made such as excessive working hours or unrealistic targets and deadlines. Again, a specialist medical practitioner such as a psychiatrist can determine the cause.
3. The workplace stress must be wrongful and actionable in law. What does it mean? It means 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, a court will adopt an objective test, which is 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 harm could have been caused. An employer is entitled to assume that an employee can cope with the pressures of the job unless they are aware of some vulnerability, for example 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 case.

Each of the above elements must be met before taking on a case for workplace stress or burnout. An employee suffering with injuries as a result of workplace stress should get the advice of both their legal advisors and medical advisors before starting such a claim.

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 all employees, regardless of seniority or level of responsibility within an organisation, 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. If the workplace stress is causing serious symptoms then you can speak with us as solicitors specialising in Work Related Personal Injuries, as soon as possible.

You can contact us on 01 9695781 or info@grogansolicitors.ie or in urgent cases you can contact Richard Grogan at richard@grogansolicitors.ie to arrange a consultation.

You can also visit our website at www.grogansolicitors.ie where there is a contact form. We are here to help.

**** 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 as a proportion or percentage of any award or settlement.**