

Summary of the
law on

STRESS AT WORK



Stress means different things to different people, but in general terms it's a reaction to excessive pressure or harassment at work.

This booklet is solely concerned with stress in the workplace.

- PROVING A STRESS CASE
- WAS IT FORESEEABLE
- WHAT DOES THE LAW SAY



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What do workers have to prove?

In a stress case, workers first have to prove that they have a psychiatric illness (the injury). Then they have to show:

- That their employer breached their duty of care
- That their work posed a real risk of causing the illness and the employer knew (or ought to have known) that they were exposed to that risk. Workers then have to prove that their employer knew that the difficulties they faced were so severe as to cause an imminent psychiatric illness. In order to prove this “foreseeability”, claimants often have to produce a report from a doctor or prove that they have been off work before due to a similar illness.
- That their employer failed in their duty of care towards them. This involves showing that the employer did not do everything that was reasonable in the circumstances to keep the worker safe from harm. This includes the court looking at how the employer dealt with any risks.
- That the harm they suffered was caused by their work and their employer’s breach of the duty of care owed to them.



Was it foreseeable?

Proving that the psychiatric injury was foreseeable by the employer is a crucial part of any stress at work claim. It is very difficult to prove.

The courts have said that foreseeability depends on what the employer knew or ought to have known about the pressure on the individual employee at the time.

That doesn't mean employers have to ask about a worker's state of health all the time, but if there are obvious things happening (for instance, the person keeps bursting into tears), then the House of Lords has said that they would expect a reasonable employer to realise that there might be a problem.

Take the 1995 landmark case of *Walker v Northumberland County Council*, in which Mr Walker had two nervous breakdowns. As the employer had been deemed to have been "put on notice" after the first breakdown, Mr Walker's second breakdown was therefore entirely foreseeable as they did not provide the extra help they promised him.

However, since then, there have been a number of notable cases (such as *Hatton v Sutherland*; and *Barber v Somerset County Council*) which have made clear the extent of the onus on claimants to prove their claim.



Once an employer has become aware that a worker seems to be struggling, they must investigate the problem and find out what they can do to resolve it. This will depend, to some extent, on the size of the employer and the resources available to them.

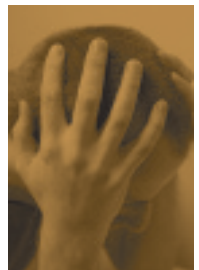
In particular, the courts have said that an employer who offers a confidential counselling advice service is unlikely to be in breach of their duty. That does not mean, however, they are a “panacea” in all cases and just having a counselling service is not enough to correct an employer’s breach of duty of care.



Who was to blame?

Workers also have to show that it was more likely than not that their employer was to blame as a result of a breach of their duty. This is called the “balance of probabilities”.

Claimants can prove that they were at fault either by showing that their employer breached a “common law duty” (law made by judges) or a statutory duty (an actual law).



What does the law say?

The common law says that employers are responsible for the general safety of their employees while they are at work. In addition, employers have to comply with a number of statutes, such as:

- The Health and Safety at Work Act 1974 which states that employers have a duty to ensure that, as far as is reasonably practicable, their workplaces are safe and healthy. They also have to take measures to control any risks that they identify.
- The Management of Health and Safety at Work Regulations 1999 state that employers must carry out a risk assessment of the risks in the workplace. Any measures they take to control the risks must be based on this assessment

Employees can also rely on the following statutes if they want to bring a claim of stress at work, depending on the circumstances:

- Disability Discrimination Act 1995 - stress may turn out to be the sign of an underlying condition that would amount to a disability. Under the Act, employers are required to make reasonable adjustments to the workplace, such as reducing the employee's workload or pressures on an employee who is under stress
- Discrimination legislation - if someone is being treated unfairly by, say, a line manager who treats female staff in an overbearing and dominating way, they may be able to argue that such behaviour amounts to sex discrimination



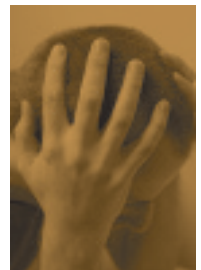
What about the Protection from Harassment Act?

As a result of two decisions in 2006, it seemed that the Protection from Harassment Act (PHA) 1997 offered a good route for potential claimants suffering from stress.

In *Majrowski v Guy's and St Thomas's NHS Trust*, the House of Lords said that employees could use the PHA to sue their employers for damages for workplace harassment. Likewise, the High Court in *Green v DB Group Services (UK) Ltd* said that employers could be liable for the same acts of bullying resulting in psychiatric injury under both the common law and the PHA.

However, in most cases it is far from easy to prove that an employer was liable under the PHA. To fall within it, the conduct complained about must:

- Have occurred on more than one occasion
- Be targeted at the claimant and intended to cause distress
- Be serious enough to amount to a criminal act (according to the Court of Appeal in the 2008 case of *Conn v Sunderland City Council*. The Court confirmed that the nature of the bullying throughout the course of conduct had to be of such severity that criminal proceedings could be pursued under section 2 of the Act)
- Not simply amount to a disagreement between two work colleagues
- Represent an intense connection between the conduct and the job of work
- Not be considered to be reasonable and proper criticism of poor performance



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