In today’s increasingly busy workplace, incidences of Occupational Stress are not uncommon. Employers must therefore take this issue seriously if they are to ensure that they do not fall foul of their duty of care to employees.

The Mental Health Association of Ireland commissioned a study in 2001 to review the stress levels of the general public. Almost 40% of the 1,000 people interviewed admitted being stressed as a result of having too much work, with over 50% of 25–34 year olds complaining of having too much work.

An employer owes both statutory and common law duties of care to his employees. An employer’s statutory duties regarding safety at work are primarily governed by the Safety, Health and Welfare at Work Act, 1989, together with the regulations made under that Act. Section 6 (1) of the Act states that “…it shall be the duty, of every employer to ensure, as far as is reasonably practicable, the safety, health and welfare of employees”.

Employers also have a common law duty to take reasonable care to ensure their employee’s health and safety at work, including safety from work-related stress injuries. When an employer breaches this duty of care he is liable in negligence. The notion of negligence stems from a defendant’s failure to fulfil an obligation which is recognised and generally accepted as owing to a plaintiff. It is settled law that “…the duty of an employer towards a servant is to take reasonable care for the servant’s safety in all circumstances”. (*Dalton v Frendo*, unreported Supreme Court 15 December 1977).

While employer liability imposes a duty of care on employers themselves, vicarious liability makes an employer liable for the torts of fellow employees committed in the course of their employment. The principle of vicarious liability is an important one for an employee seeking a remedy for stress. Where the existence of his stress was within the knowledge of a fellow employee, whether a peer or supervisor, the knowledge of a fellow employee is then imputed to the employer.

It is open to an employee who suffers personal injuries as a result of work-related stress to pursue claims for damages through the civil courts. The courts have long since recognised an employer’s liability for physical injury suffered by employees as a result of the negligence of either their employers (employer liability) or the actions of their colleagues (vicarious liability). It is only in recent years that the courts and legislature have begun to come to grips with the notion that an employer can be liable for psychiatric injury caused as a result of stress at work.

One of the most notable decisions in this area is a decision of the English High Court in the case of *Walker v Northumberland County Council* (1995 1 All ER). The Plaintiff, Mr. Walker, was the manager of four teams of social services field workers in the area of Northumberland. As a result of increasing volumes of work, Mr. Walker asked senior management to increase staff, or to provide management guidance on work distribution and prioritisation but this was not forthcoming.

In November 1986 Mr. Walker suffered his first nervous breakdown. He returned to work in March 1987, having been given a commitment from his immediate supervisor that he would be assisted in his duties by an Area Officer seconded to him for as long as was necessary. Mr. Walker’s superior also undertook to visit Mr. Walker weekly and guaranteed him assistance from other Area Officers.
Following his return to work, Mr. Walker was not visited by his supervisor and the Area Officer assigned to him had such a large work load of his own cases that he was only intermittently available to assist Mr. Walker. This limited assistance was subsequently withdrawn. Further, Mr. Walker found that during his absence a substantial volume of paperwork had built up and had to be dealt with upon his return. He was also faced with an increasing number of pending cases. Mr. Walker suffered a further mental breakdown later in 1987 and was again forced out of his employment on sick leave.

In February 1988 Mr. Walker was dismissed by Northumberland County Council on grounds of permanent ill health. Mr. Walker claimed damages against the Northumberland County Council for breach of it’s duty of care as his employer in failing to take reasonable steps to avoid exposing him to health endangering workload. Mr. Walker’s evidence was that his immediate supervisors knew that social work was particularly stressful and that such stress could give rise to mental illness. Mr. Walker also argued that his work load was such as to impose increasing stress on him and that his employers reasonably should have foreseen that unless they took steps to alleviate the impact of the workload, that there was a real risk that he would suffer mental illness. In the English High Court, Colman J. stated:

“There has been little judicial authority to the extent of which an employer owes to his employees a duty not to cause them psychiatric damage by the volume or character of the work which the employees are required to perform. It is clear law that an employer has a duty to provide his employees with a reasonably safe system of work and to take reasonable steps to protect him from risks which are reasonably foreseeable. Whereas the law on the extent of this duty has developed almost exclusively in cases involving physical injury to the employee as distinct from injury to his mental health, there is no logical reason why risk of psychiatric damage should be excluded from the scope of an employer’s duty of care or from the co-extensive implied term in a contract of employment.”

Colman J. accepted the difficulty in relation to evidential issues of foreseeability and causation. He confirmed that the standard of care required from an employer must be measured against the yardstick of reasonable conduct.

Colman J.’s decision has been referred to by Irish Judges and there is no reason to believe that it would not be followed. It was also upheld in the decision of Sutherland v Hatton in the U.K. (Court of Appeal 5th February 2002, House of Lords 1st April 2004). The Hatton decision concerned appeals by four employers against earlier decisions where their respective employees had been successful in suing for injury arising from work-related stress. Apart from the nature of the cases, the claims were otherwise unrelated having taken place in four different counties in the U.K. In fact, the Plaintiffs were quite different. Mr. Bishop was a manual worker in a factory, Mrs. Hatton and Mr. Barber were secondary school teachers and Mrs. Jones was an administrative assistant. Hayle L.J. in the English Court of Appeal set out 16 practical propositions for the guidance of the courts concerned with this type of claim in relation to the duty, foreseeability, breach of duty causation and apportionment, and quantification of claims.
16 practical propositions:

1. Duty – there are no special control mechanisms applying to claims for psychiatric (or physical) injury or illness arising from the stress of doing work which an employee is required to do. Therefore, the usual principles of employer’s liability will apply;

2. Foreseeability – was this type of harm to a particular employee reasonably foreseeable? This has two components:
   (i) an injury to health; and
   (ii) contributable to stress at work;

3. Foreseeability will depend on what an employer knows (or ought reasonably to know) about an individual employee;

4. There are no occupations which should be regarded as intrinsically dangerous to mental health;

5. The nature and extent of work being done by an employee and signs from an employee of impending harm to health will be relevant;

6. An employer is usually entitled to take what he is told by an employee at face value unless he has good reason to think to the contrary;

7. To trigger a duty to take steps, the indication of impending harm to health arising from stress at work must be plain enough for any reasonable employer to realise that he should do something about it;

8. An employer is only in breach of duty if he has failed to take steps which are reasonable in the circumstances;

9. The size and scope of an employer’s operation, its resources and the demands it faces will be relevant in deciding what is reasonable in the circumstances;

10. An employer can only reasonably be expected to take steps which are likely to do some good;

11. An employer who offers a confidential advice service with referral to appropriate counselling or treatment services is unlikely to be found in breach of his duty;

12. If the only reasonable and effective step would be to dismiss or demote an employee, an employer will not be in breach of duty in allowing a willing employee to continue in a job;

13. It will always be necessary to identify the steps which an employer both could and should have taken before finding him in breach of his duty of care;

14. A 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 caused the harm;

15. Where the harm suffered has more than one cause, an employer should only be required to pay for that proportion of the harm which is attributable to his wrong doing; and

16. The assessment of damages will take account of any pre-existing disorder or vulnerability.
The Court of Appeal overturned three out of four of the awards made by the English High Court. One of the employees, Mr. Barber, whose award was overturned by the Court of Appeal appealed Hayle L.J.’s decision to the English House of Lords. While Mr. Barber was successful in his appeal, the House of Lords upheld the principles of law set down by Hayle L.J. in the Court of Appeal. Mr. Barber’s case was decided on its own particular facts. It transpired that Mr. Barber had submitted medical certificates to his employer which stated that he was stressed and depressed. In addition, Mr. Barber told his employers that he was not coping very well and that his workload was becoming detrimental to his health. In those circumstances, the House of Lords held that the response of Mr. Barber’s employers to the information that he was finding it difficult to cope was inadequate and at the very least his position should have been investigated.

Unfortunately, there are very few reported decisions in Ireland in this area in this jurisdiction, though we would recommend that the practical propositions set out by Hayle L.J. are followed.

Dr. Joseph Hogan, a Consultant Radiologist at Ennis Hospital sued his employer, the Mid-Western Health Board for negligence. His action was settled last November during the second day of the hearing. Dr. Hogan was the sole Consultant Radiologist at Ennis Hospital and had no back-up whatsoever. Therefore, although he had a contractual entitlement to thirty-one days leave in each leave year, no locum or other consultant was ever provided by the Mid-Western Health Board. In addition, he was on call to the hospital twenty-four hours a day, seven days a week, except for rest days. Even on those rest days he had no cover and so he was unable to take them because of the build-up of work. Counsel for Dr. Hogan told the Court that under the “Fosterhill system of measuring the workloads of a Consultant Radiologist, Dr. Hogan was doing the work of three consultants”. Dr. Hogan suffered a breakdown in August 1996 but returned to work thereafter. In 1997 he had accumulated some five hundred rest days but was refused payment for them. Instead he was told that he would be given an allowance of two hundred and two days by being allowed to retire a year earlier than he would have been due, in 2013 rather than 2014. Dr. Hogan was unwell in November 1997, again in 1998 and 1999. His evidence was that in June 2001 “the wheels came off” and he had a complete breakdown. A classic Walker scenario and hardly surprising that the matter settled for what was rumoured to be quite a large sum.

In summary, an employer will only be liable in damages for work-related stress where the employer knew or ought to have known about the stress but failed to take any steps to remedy the causes of the stress. The courts will look to whether an employee’s illness was reasonably foreseeable and whether there were any steps which could and should have been taken to prevent that illness.

From a purely practical perspective we would suggest that every attempt is made both at the outset of the recruitment process and for the duration of the employment relationship, to ensure that an employee understands what is required of him/her in relation to a particular position going forward. In addition, it is imperative that employers learn to deal with and manage stress actively. Employers are not in a position to make a call as to whether an employee is stressed or not and therefore employers should always appoint medical practitioners and/or specialist psychologists or psychiatrists to meet with and report on employees complaining of work-related stress.

Employers should also actively tackle identified stressors in the workplace. By putting in place proper policies, procedures and reporting structures and ensuring clear divisions of work, employers can take some steps towards ensuring that employees work in a stress free environment.

If you have any queries or require further information, please contact:
Melanie Crowley  Tel: (01) 614 5230  Email: mcrowley@mhc.ie