Stress in the Workplace

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Welcome

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Work Related Stress

Why are we talking about it?

• Stress is an increasingly common – both inside and outside work
• Ireland has a relatively high incidence of mental health issues
  • But about average in terms of workplace related stress
• When do we see it?
  • Disciplinary process
  • Performance management
  • Grievance investigation
  • Dignity at work investigation
What is Workplace Related Stress?

Definition

• According to the HSA:
  • Stress = the negative reaction people have to aspects of their environment as they perceive it. Involves a sense of inability to cope.
  • Work related stress = stress caused or made worse by work.
Causes and Contributing Factors

- Often occurs where:
  - low levels of control and support
  - Badly designed shift work
  - Poor communications
  - Poor/non-existent systems for dealing with bullying/harassment/grievances
- An employee who is experiencing stress generally may be less able to cope in workplace
Causes and Contributing Factors

• Potential causes of work related stress:
  • Role: is it clear and integrated?
  • Relationships: is there strain, disharmony, even aggression?
  • Hierarchies and Leadership: effective and fair management, supported by positive leadership?
  • Control: what level of control do employees have?
  • Training: are people adequately trained?
  • Demands: workload, time, standards.
Legal Responsibility of Employers

Statutory Obligations and Liabilities

• Employers have a duty under the Safety, Health and Welfare at Work Act 2005 to ensure a safe place of work
• Required to assess working environment for systems and practices leading to health and safety hazards – including stress
• Must be included in your safety statement and included as part of your workplace risk assessment – is it?
• Health & Safety Authority - “Work-Related Stress A Guide for Employers”
Legal Responsibility of Employers

Statutory Obligations and Liabilities

- Workplace Relations Commission.
  - Industrial Relations Acts, 1946 - 2015
    - Disability discrimination
    - Potential constructive dismissal
  - Safety, Health & Welfare at Work Act, 2005
Legal Responsibility of Employers

Civil Liability

- Civil Courts
  - Negligence
  - Breach of duty of care
  - Breach of statutory duty
  - Breach of contract
    - Breach of trust and confidence
    - Failure to promptly deal with complaints
Legal Framework

• *Sutherland v Hatton* (UK Court of Appeal)
  • Set out principles or “practical propositions” to assist in considering employer’s duty of care
  • “Unless he knows of some particular problem or vulnerability, an employer is usually entitled to assume that his employee is up to the normal pressures of the job.”
Legal Framework

• **Berber v Dunnes Stores Ltd (High Court)**
  • Issue of liability
    • Has employee suffered an injury as opposed to ordinary occupational stress?
    • If so, is that injury attributable to the workplace?
    • If so, was the harm suffered reasonably foreseeable in all the circumstances?
Legal Framework

General Points

• Cases often refer to the standard of the “reasonable and prudent employer”
• Constructive Dismissal
  • Remember need to exhaust internal procedures
• Employment Equality
  • Is work related stress actually a disability?
• Remember vicarious liability
Legal Framework

General Points

• “An employer does not guarantee to cocoon employees from stress and upset, nor is the employer a guarantor of the safety or health of the employee. Whether workplace stress is unreasonable is a matter of judgment on the facts. It may turn upon the nature of the job being performed as well as the workplace conditions. The employer's obligation will vary according to the particular circumstances. The contractual obligation requires reasonable steps which are proportionate to known and avoidable risks”

• -Ruffley v Board of Management of St Anne’s School (Supreme Court)
Stress in the Workplace

Ronnie Neville, Partner, Employment Law & Benefits
“What should you do from a practical and legal perspective when an employee goes off sick citing stress, anxiety, or work related stress, when engaged in a management process (i.e. a grievance, disciplinary or PIP)?”
"Stress is not a disease or injury but it can lead to mental and physical ill health"

HSA

"reasonable to assume that being subjected to a disciplinary process...are events which might be accompanied by a certain degree of stress, they are events which are encountered in the normal course of the management of a business or organisation. In the absence if any reason for a contrary conclusion, an employer is entitled to assume that an employee is able to withstand such stress."

Shortt V Royal Liver Assurance Ltd 2008
Meeting with Employee

- invitation triggers going off sick for stress/work related stress
- actually an attempt to stall the process? malingering?
- consider postponement and record your rationale for decision
- "what's the rush?"
What are the Employer’s concerns

1. How to manage or resource the process, or processes
2. How to keep the processes moving along
3. The obligation to provide reasonable accommodation
4. How to address risk of a disability discrimination claim
5. Risk of a PI stress claim
6. How to communicate with the employee throughout
Managing Parallel processes

- **Absence Management Process**
  This will commence and continue in the normal course
  You will need to involve occupational health

- **Performance / Disciplinary Process**
  Pause the process

- **Grievance**
  Progress with witnesses
  Rely on witnesses submissions and determine the outcome
Occupational Health Specialist

- UK Occ. health association’s view that the effects of an unresolved dispute may actually cause greater harm to employee’s mental health
- Employee may be unfit for work, but still fit to engage in particular management processes (disciplinary/PIP etc)
- Up to occupational health expert to advise on whether engaging will cause significant deterioration in mental health
Occupational Health Specialist (cond.)

1. Choose practitioner carefully
2. Carefully drafted questions
3. Right to know symptoms as they impact work
4. Reasonable accommodation to allow the process to continue
Possible adjustments which could be offered to the process

- Have the matter dealt with
  - in writing
  - over non-standard period of time (e.g. two full days rather than one full day)
- Neutral venue
- Regular breaks
- Allowing a companion at the meetings outside of the usual employee/union official.
Disability discrimination risks

- Irish definition of disability much broader than Framework Directive - no requisite threshold of severity or duration of disability that has to be met

- “While a disability does not necessarily have to be very substantial or long-term in order to come within the definition, effects or symptoms that are present to an insignificant extent are likely to be disregarded by the Tribunal or Labour Court.”
  
  A Government Department v A Worker, EDA/094

- Equality Tribunal and now WRC has said on numerous occasions “work related stress” in and of itself is NOT a disability
Disability discrimination risks (Contd)

- BUT beware actual or constructive knowledge of other illnesses/conditions
- Adjudicator –"disability must be looked at ‘in the round’. It cannot be reduced to a game of bingo where a complainant’s doctor labels a condition on the medical certificate in a certain way and the disability provisions automatically apply and s(he) calls it something else and the disability provisions do not apply.
- Ms B v A Newsagents and a Deli 2013
The employer is obliged to put in place systems of work which protect employees from hazards which could lead to mental or physical ill-health.

Psychiatric injury claim:
- Damage – **not** ordinary occupational stress
- Causation
- Foreseeability – knew or ought to have known
Top Tips

- Proceed with care
- Process may not need to be delayed indefinitely or until employee recovers fully
- You will need a medical report
- Employee though unfit for work may be fit to attend disciplinary hearing
- Reasonable accommodations advisable
- EAP
- Consider introducing a Stress Policy (or update your Wellness Policy)
- Ask the employee what steps they recommend to address the situation (you are not obligated to take these steps)
- Discretionary sick pay may offer leverage – use with caution!
- Be (and be seen to be) the Reasonable Employer
Thank you

Questions?

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