
Stress as a Disability Under Section 6 of the Equality Act 2010: A Memorandum for Employers How to Deal Stress at Work

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Abstract One of the major problems of the 21st century is the increasing trend of stress. When anxiety takes over, behavior ceases to be normal. Often, this person is incapable of working and also of normal life. This translates into disability. Directly responsible may be the employer who also has legal responsibility towards his employees. Proper staff management ensures a calm and constructive work environment. Prevention is the best way to deal with it. Every employer should take care to provide a pleasant and healthy work environment. A memorandum for employers should be in place to ensure what is needed for employees to be mentally and physically healthy and to achieve business goals

Keywords: Stress, employer, disability, workplace, employees, Equality Act 2010

1. Introduction and Literature Review

Stress has a profound effect on employees lives. Due to the increase in the pace of life, work stress has increased to a dangerous degree and causes either physical illnesses or psychosomatic and/or

psychological disorders. Research on workplace stress confirms that an increase in work-related stressors is directly related to the development of cardiovascular disease, respiratory and gastrointestinal disorders and infections, and increased drug use.

So it is very important to know how we can deal with the challenges that cause us stress. Too much stress damages our health, reduces our productivity and increases our personal problems.

Employers must not allow, in any way, conditions to be created in the workplace, which cause employees pressure and stress. In the eyes of some courts, faced with such situations and the consequences they have on human health, the solution lies in the hands of employers. Managers must take the effects of stress seriously and develop programs to identify the symptoms of excessive stress before it leads to serious problems between the two parties.

What is disability according to the law

In the eyes of a painter, the anxiety that overwhelms a person can be reflected on paper as a grey cloud through which featureless human figures appear. The sunlight should be dim. This image shows us that there is a clarity problem.

Stress undermines health, both mentally and physically. Headaches, migraines, shortness of breath, depression, heart disease, kidney disease and many more are the consequences of excessive stress. Work stress is a frequent cause of serious problems. We recognize its existence but fail to find a way to deal with it. The inaction of the parties involved can worsen our health and even cause us disability. Undoubtedly, it can cause problems at family and personal level, breakdown of marriage and consequently cause social problems in the society.

An anxious person cannot think straight, concentrate and perform satisfactorily at work. There are many cases in which people with excessive work load and constant overtime become overwhelmed with stress and collapse. According to the World Health Organization¹, stressed workers are more likely to feel insecure at work, less productive, less motivated to move up the ladder, and are at greater risk of depression and mental health problems.

¹ Barbara J. Zabawa, 'Using the Law to Reduce Worker Stress' (WELCOA News, 2021)

<https://www.welcoa.org/blog/using-law-reduce-worker-stress/>>25 January 2022.

The UK research firm Perkbox¹ tracked the behaviour of employees and employers in UK for two years and found that 59% of workers suffered from stress at work. 21% developed stress due to increased working hours. 72% of highly paid employees were found to experience excessive stress and the effects on their health were: 65% lost sleep due to stress and 56% are looking for a new job with less stress, even with reduced income (see appendix 1). After analysing the results, the survey showed that 602,000 workers were diagnosed with long-term clinical depression, which is a psychological illness. In such cases the victim may seek compensation.² The difficulty lies in being able to prove that their problem was created by excessive stress in the workplace following the employer's negligence.

Section 6 of the Equality Act 2010 defines that if a person has lost a long-term, significant part of their ability, physically or mentally, to perform normal daily activities, they are considered disabled. Also if a person has either a physical or mental disability, they are considered a person with a disability.

Therefore, a person suffering from excessive stress, whose ability to perform their duties and/or activities is significantly reduced for a long period of time, is considered a person with a disability and is protected by law.

The court in many cases such as *Carter v General Motors Corporation*³, attributed the plaintiff's disability to reasons and circumstances related to his employment. The plaintiff's bad psychological condition was caused by problems in the workplace, resulting in him being disabled.

*Emery Eugene BAILEY v American General Insurance Company*⁴, the Supreme Court held that an employer is not required to conduct investigations to establish that an employee does not continue to suffer from a mental illness because he claims he is well and ready to resume duties of. Of course, Emery's mental illness may have affected his perception of what he can and cannot do. The

employer had to be more attentive and share a large share of responsibility in monitoring and guiding the reintegration of the affected employee into the work environment.

Employers, by law, when faced with situations where employees in their service face increased levels of stress, must take steps to address the problem.

2. Methodology

This study employs a qualitative approach in so far it reviews legislation and the basis of the case law as well as research on the issue discussed. The study concludes with recommendations for employers.

3. Historical Context

Studies have been conducted from time to time to determine why many workers become stressed. The rate of increase in occupational stress diagnoses is increasing dramatically. Employers can be a major contributor to employee stress. Constant demands, ever-tightening timelines and expectations for the best possible results create a complex of pressure on recipients.

The "victims", if we can call them receivers, in turn bear their own responsibility for accepting everything that creates situations harmful to their health. In cases where they find that certain behaviours or demands from colleagues or superiors are causing them stress, they should report it to the appropriate department to address the issue before it becomes harmful to their health. There are not a few cases where the intervention of the court was needed to resolve such situations.

According to a survey conducted by Yale University, 29% of employees said they felt overly stressed about their work. 40% of employees in a Northwestern National Life survey claimed that their jobs were extremely stressful⁵.

² 'The 2020 UK workplace stress survey' (Perkbox Co, 2021)

<<https://www.perkbox.com/uk/resources/library/2020-workplace-stress-survey>>30 April 2022.

³ 'Personal Injury and Industrial Disease'

(Branchers Law Co, 2019)

<<https://www.brachers.co.uk/insights/case-study-a-successful-stress-at-work-or-depression-claim>>16 February 2022.

⁴ (1955) 279 S.W.2d 315.

⁵ (1960) 361 Michigan 577, 106 N.W.2d 105.

⁶ Corporate Wellness Magazine, 'Workplace Stress: A Silent Killer of Employee Health and Productivity' (Business of Well-being, 13 Jun 2021)

<<https://www.corporatewellnessmagazine.com/article/workplace-stress-silent-killer-employee-health-productivity>>accessed 10 January 2022.

Work stress, although it existed, assumed with the creation of the employer-employee relationship, an important role in our lives and its reference as a social issue appears in the 1960s. The increasing demands in the workplace, specialization in the sciences and more, led the scientific community to the study of occupational stress.

Employers according to Health and Safety at Work Act 1974, s.2 have a responsibility to care for their employees and provide them with a healthy and safety workplace. In cases where they find that an employee is experiencing stress problems, they should make sure to provide substantial help and resolve the issue. The employee also, in cases where he feels pressured and dominated by stress, should inform his employer and ask for help in solving the problem caused by stress.

3.1 Stress as disability

A hundred years back before people lived a simpler and frugal life and carefree life. Nowadays the rhythms of life have changed. Society has become complex and demands are high. Men and women work and are career people. The hours away from home are increasing due to increased work obligations. Employers and/or managers constantly set high goals to achieve and employees are put under enormous pressure to achieve them. Once they reach their goal, then a higher goal is set to conquer. This constant pressure creates stress on the recipient. When stress reaches a point where you can't handle it, then you become unable to cope with even everyday matters. You can't think straight, concentrate, even sleep and generally can't be yourself. Too much stress changes you. It causes you physical and mental disability.

In 2016, Aon Hewitt¹ conducted research to study stressors. He repeated the same research in 2017. Comparing the two, he concluded that in one year the stress levels were 5% higher. The five stressors identified in the study participants were: 50% due to financial status, 41% due to change at work, 40% due to a busy work schedule, 36% due to employment relationships, and 33% due to control over conducting their work. According to the World Health Organization, people who are stressed and working may not be able to perform at 100% of their abilities. The more stress one feels, the less one can perform. These people are often discriminated

against because of the diversity of their stress (see appendix 2).

According to s6 (1) of the Equality Act 2010 a person is considered disabled if he/she is unable to carry out normal day-to-day activities. When a person is discriminated against because of their disability then this is against the law and is covered by s15². In *Mr A Hurle v London Fire Commissioner*³, the plaintiff sought compensation for his dismissal. His dismissal, according to the employer, came from a long absence from work due to depression which was caused by excessive stress. Mr Hurle claimed that there was discrimination against him based on disability and that his employer failed to make reasonable adjustments to help him even though he had informed him of his state of health. The court ruled that the employer had not acted properly. The plaintiff was entitled to compensation on the grounds that he had been discriminated against because of his disability⁴.

According to a study by Aon Hewitt, cited above, 85% of employees surveyed would like to see help with stress management. On the employer side, however, only 42% had stress relief programs.

3.2 Employees' duties to product themselves from stress

It would not be reasonable to expect a third party to care more about our mental and physical health than we do ourselves. Everyone has an obligation to know themselves and to know what the limits can be reached.

In the case of *Milton HARPER, Deceased, By and Through his Dependents, Maggie HARPER and Andrea Harper v BANKS, FINLEY, WHITE & CO. OF MISSISSIPPI, P.C.*⁵ evidence showed that Mr Harper worked long hours seven days a week. He was having problems with work schedules which had been given to him. As a result, he had suffered excessive work stress which in turn, had caused him hypertension, stroke and after death. In part it was his responsibility to 'listen' to what his body was telling him and to stop working under excessive pressure.

The court was asked to decide on a claim for damages for unfair dismissal and omission by the employer to take appropriate action on a health

⁷ *ibid* (1).

⁸ Equality Act 2010.

⁹ [2020] Case Number: 3202069/2019 V.

¹⁰ Equality Act 2010, Section 20.

¹¹ 167 So.3d 1155 [2015]

problem presented to Mr Mackenzie due to work stress in *Mackenzie v AA plc and another*¹². Bob Mackenzie claimed that although he suffered from severe anxiety and depression for a long time, his employers failed to support him.

The employers claimed that they had not been informed of the seriousness of his condition and that the outbursts of anger he had from time to time were considered to be part of his character.

The question is, if Mackenzie had informed his employers about his psychological condition. It was his responsibility to inform and try to avoid what was causing him so much stress. On the other hand, the company was responsible for monitoring the behaviour of employees and when it noticed a change in it, to make appropriate and reasonable adjustments to facilitate the affected employee and avoid unpleasant situations. In the workplace, it should create appropriate mechanisms to help solve such problems.

In *Mullen v Accenture Services*² the Court found that the plaintiff did not inform his employer of his psychological condition until it had collapsed. His long working hours, lack of breaks and occasional outbursts of tears were not considered by the court enough to blame the employer. If he informs in time and the employer does not make the appropriate logical arrangements to solve the problem, then the employer is fully responsible for anything that may occur. The courts have set the bar too high for evidence of employer liability for stress-induced illness in the workplace.

Also in *Harding v The Pub Estate Company Ltd*³ the plaintiff was working in a pub where there was criminal activity. This caused him a lot of anxiety and stress. He suffered a heart attack as a result. The court, however, rejected his claim because he had not informed his GP, nor his employer.

3.3 Employers' duties to protect employees from stress

Throughout the 21st century, working conditions for every employee have improved compared to what prevailed at the beginning or even in the middle of the last century. Trade unions play an important role in safeguarding workers' rights. According to the Health and Safety at Work Act 1974, s2, employers

have an obligation to all employees to ensure the health, safety and welfare of all in their workplace. In 1998, after persistent and exhausting struggles of the employees, "The Working Time Regulations 1998" were implemented. The working hours are established (48 hours per week) and the employer is obliged to observe it. Long working hours and continuous shifts are a common cause of work stress.

Employers according to "The Management of Health and Safety at Work Regulations 1999" s3, if they have more than five employees, are obliged to assess the risks to which their employees are exposed during the performance of their work and to take such arrangements to provide them with health and safety.

In *Walker v Northumberland County Council*⁴ a senior employee suffers a nervous breakdown after prolonged stress at work. After an absence of 90 days, he returned to work but he suffered a second nervous breakdown due to excessive stress at work. The Supreme Court ruled that the employer should have foreseen that a senior social worker, with a high workload, would have a higher risk of mental illness than an ordinary employee. Walker's first nervous breakdown may not have been predictable. But then the employer had to take the appropriate measures to facilitate the employee and relieve him of overwork. The negligence to do so led the employee to collapse and lose his career.

In *Barber v Somerset County Council*⁵, the House of Lords basically agreed with the decision of the Court of Appeal. When the risk of harm to an employee's health resulting from excessive stress in the workplace is predictable, the employer has a duty to ensure that everything necessary is provided to ensure the safety, health and well-being of the employee.

Lady Hale LJ, in the case of *Hatton v Sutherland*⁶ has given sixteen propositions to summarise the law on who is responsible for causing illness due to occupational stress. Very briefly we can say that it refers to the following points: Finding out if the mental illness was caused by excessive work stress and if the illness was predictable for the employer and if has been informed, has made all the necessary arrangements to help the sufferer. All occupations have the potential to cause stress and consequently

¹² [2021] EWHC 1605 (QB).

¹³ [2010] EWHC 2336 (QB).

¹⁴[2005] EWCA Civ 553.

¹⁵ [1995] IRLR 35.

¹⁶ [2004] IRLR 475 HL.

¹⁷ [2002] All ER 1.

mental or physical harm to the employee. The employer who provides the appropriate counselling service to solve such problems is considered to have fulfilled his duty to support the employee. If the employer violates his duty to support the employee, then the second thing left for the employee to do is to prove that the damage he suffered was caused by stress in the workplace. Each case will be carefully considered by the court and in claims for compensation will be taken into account a pre-existing case of disorder or vulnerability and whether they were related to stress.

Also in the case of *Hone v Six Continents Retail Ltd*¹⁸ the plaintiff was forced to work 90 hours a week in order to be able to cope with the tasks assigned to him. He repeatedly asked for help from his employer, who refused. The plaintiff fell ill due to excessive stress. The court in its decision stressed that the importance of the regulations is crucial. Employees must work up to 48 hours a week to maintain their health and well-being. The company was responsible for the effects of the stress experienced by the employee in the workplace.

It is pertinent to acknowledge that the employer, after being informed about the problem, has a duty to protect his employees from any danger at work, whether he is physical or mental. Even in cases where the person is not able to be aware of his situation, the employer should notice any changes in his behaviour and offer appropriate assistance.

4. How to deal with stress cases at workplace: Memorandum for employers

Given that the good physical and mental health of people working in the company can increase profits, due importance should be given to ensuring it. Every employer should think of ways and take care of the health of their employees. It must also create such data in the workplace, which will give the employee the feeling that he is at home.

Below are some suggestions that employers can study and apply to achieve the best desired results in relation to employee well-being in their business.

1. During the recruitment process, encourage transparency on the part of the candidates, to make sure that you have all the information you need to

evaluate the person, both cognitively and psychosomatically.

2. Create a structured Human Resources Department at work that can deal with employee stress and other disabilities, thus taking responsibility for addressing the problems that the affected employee in each department has.

3. Create a service and implement a psychological support plan for your staff.

4. Inform about its existence and encourage them to use it when they need it.

5. Encourage fruitful discussion on mental health issues and help them train with appropriate seminars.

6. Reassure them that there is transparency and accountability through interdepartmental reports and encourage them to report anything that bothers them.

7. Have frequent meetings with employees encouraging them to talk to you about anything that concerns them and makes them stressed.

8. Have daily personal contact with them, even to greet them to make them feel more familiar with you.

9. Regularly assess the risks of developing anxiety and stress by monitoring the behaviours of your employees.

10. Develop a sense of mutual support and awareness among employees about mental health issues by giving them appropriate information material.

11. Provide employees with good working conditions.

12. Offer appropriate workplace adjustments to employees who need them.

13. Make sure they have development opportunities.

14. Make sure they train regularly on work issues to help them perform their duties better.

15. Train supervisors on effective personal management issues to ensure good practices through regular conversation between supervisors and

¹⁸ [2005] EWCA Civ 922.

employees on issues related to their health and well-being in the workplace.

16. Commit that mental health issues will be treated with the utmost confidentiality and if necessary bring them into contact with a Special Occupational Health and Support Program or a specialist doctor.

17. Encourage employees to exercise. Give them physical exercise vouchers for gym or dancing school, as a reward for their progress at work.

Conclusion

Constantly increasing stress contributes significantly to poor mental and physical health, low productivity and generally affects our lives both at work and at home.

Everyone needs to recognize the extent to which they can take responsibility and set limits. When he realizes that he is in danger of being overwhelmed by anxiety, he should take steps to avoid it. The first thing he should do is to inform his employer about his psychological condition. Seek help early so that the problem does not turn into a disability. Such a disability can also cause serious problems in the family. Many couples have broken up because they could not withstand the adverse changes brought about by stress problems both psychologically and physically.

When the employer is informed, they should prioritize the matter and make sure to find a way to deal with the problem immediately. Employees with these types of problems may be detrimental to a company rather than investing in a preventative and troubleshooting service.

In general, the employer should develop such techniques in the workplace and personnel management to ensure the proper and smooth running of the business. Staff must be kept in excellent mental and physical health. Personal contact with them helps to identify early any symptoms that lead to the conclusion that the employee is facing a problem. Labour disputes and claims for negligence on the part of the employer are avoided. The staff is happy, healthy and working to the best of their abilities, while the employer is prosperous in the company with lots of profits.

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