



Health and Safety Update: Managing stress in the workplace

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It is well known that a person's mental health can be affected by many factors, including those outside of the workplace as well as those inside the workplace. If someone is experiencing difficulties, or is stressed outside of work, it may affect how they work and vice versa. It is, therefore, an important consideration for employers and employees.

Work-related stress is defined by the Health and Safety Executive ("HSE") as "the adverse reaction people have to excessive pressure or other types of demand placed upon them". It is a reaction to experiences at work. This is distinct from a normal amount of 'workplace pressure', which can have a beneficial effect in improving performance and job satisfaction.

Work-related stress has been identified as both a cause of health problems and as an exacerbating factor for other illnesses. The effects of stress can result in physical and mental conditions, such as anxiety and depression, and physical health problems such as heart disease.

What does health and safety law say?

Unlike other health issues such as noise, vibration or musculoskeletal disorders, there is no health and safety legislation that specifically addresses work-related stress. However, under The Health and Safety at Work (Northern Ireland) Order 1978, every employer has a duty to: "ensure, so far as is reasonably practicable, the health and safety at work of all his employees"¹. In addition, under The Management of Health and Safety at Work Regulations (Northern Ireland) 2000, each employer is under a duty to "make a suitable and sufficient assessment of ... the risks to the health and safety of his employees to which they are exposed whilst they are at work..."².

There is, therefore, a clear onus on employers to protect employees from stress-related illness as a result of their work. Employers must also take measures to control any identified risks. Work-related stress should be seen as a hazard to everyday work life, just like any other aspect of health and safety. While risk assessments may have traditionally focused on employees' physical safety, it is now recognised that they apply equally to their mental health and well-being.

It is also well accepted that, regardless of the legal requirements, given the significant human and financial costs associated with work-related stress, employers can benefit from taking a proactive

¹ Section 4 of the Health and Safety at Work (Northern Ireland) Order 1978

² Regulation 3 of the Management of Health and Safety at Work Regulations (Northern Ireland) 2000

approach to its management. The HSE has produced the following statistics on work-related stress based on data obtained in 2015/16 through the Office of National Statistics' Labour Force Survey³:

- The total number of cases of work-related stress, depression or anxiety in 2015/16 was 488,000 cases, a prevalence rate of 1,510 per 100,000 workers (1.51%);
- In 2015/16, work-related stress accounted for 37% of work-related ill health and for 45% of all working days lost due to ill health; and
- Each case of work-related stress during 2015/16 led to an average of 23.9 working days lost.

Most businesses have an ethos of investing in their employees and appreciate their value. When you consider the statistics above, it must also make financial sense to ensure employers are aware of, and take steps to manage, work-related stress. The potential benefits include:

- Less absenteeism, which will reduce: sick pay, the requirement for sickness cover, work not being completed on time and time spent on training new staff;
- Retaining staff who are trained in and good at the job;
- Better workplace morale;
- A reputation as a 'good place to work'; and
- Fewer accidents as a result of human error.

HSE(GB)⁴ and HSENI⁵ have produced guidance which recommends following the usual 'five steps to risk assessment' to manage work-related stress and, in relation to Step 1, have identified six main risk factors that can have a negative impact on employee health if not properly managed, namely:

1. **Demands** – this includes issues such as workload, work patterns and the work environment.
2. **Control** – how much say the person has in the way they do their work.
3. **Support** – this includes the encouragement, sponsorship and resources provided by the organisation, line management and colleagues.
4. **Relationships** – this includes promoting positive working to avoid conflict and dealing with unacceptable behaviour.
5. **Role** – whether people understand their role within the organisation and whether the organisation ensures that they do not have conflicting roles.
6. **Change** – how organisational change (large or small) is managed and communicated in the organisation".

The guidance also sets out the "states to be achieved" which represent good management practice across each of the areas. The guidance also recommends that the focus is placed on organisational level issues, as opposed to individual employees.

Employers are entitled to expect that employees can cope with normal workplace pressures of the job, unless they know of a particular problem. The risk assessment process will assist the employer to consider whether certain hazards can be eliminated, and, if not, what 'reasonably practicable' control measures are required to control the risks. This could involve measures, which are as simple as talking to your employees about how to manage stress, to considering whether it is possible to make changes to their job role.

³ <http://www.hse.gov.uk/statistics/causdis/stress/>

⁴ <http://www.hse.gov.uk/pubns/indg430.pdf> and <http://www.hse.gov.uk/pubns/priced/hsg218.pdf>

⁵ <https://www.hseni.gov.uk/topic/mental-well-being-work> and <https://www.hseni.gov.uk/articles/how-implement-management-standards-your-organisation>

In determining what are 'reasonable' measures, employers should consider the risk of harm to health, the likelihood that measure will resolve them, the cost of preventing them and the resources available to the employer.

Employers may also choose to take other steps in managing this area, such as the introduction of a stress policy to set out how the company or organisation intends to manage this issue, as well as making roles and responsibilities clear. The employer may also wish to introduce a programme of training and awareness, particularly for senior managers and line managers. Whichever measures are adopted, it is important to ensure a collaborative approach with managers, employees and their representatives in effecting a positive change on employee mental health and well-being at work.

Can enforcement action be taken?

HSENI has the authority to inspect organisations and investigate complaints relating to work-related stress. HSENI may take enforcement action, for example, by issuing an improvement notice, where employers fail to, or fail to sufficiently, assess risks and/or put in place appropriate control measures.

In 2003, HSE(GB) issued such a notice to an NHS Trust for a failure to assess the risk caused by work-related stress. This is, therefore, an area that HSE is prepared to take action in.

It is also worth highlighting that, employees can, and have, made claims against an employer for illnesses caused by stress at work. In the case of *Sutherland v Hatton*⁶, the Court of Appeal laid down guidance as to how the courts should approach these sorts of cases, which was then endorsed by the House of Lords. Whilst the guidelines do not make it straightforward for an employee to establish that compensation should be awarded for work-related stress, they do make it clear that the onus is on employers to take responsibility for the health and well-being of their staff. HSENI notes that: "industrial tribunals/civil courts look favourably at organisations that have attempted through risk assessment to eliminate, reduce or control these risks"⁷.

Summary

Tackling and managing the complex issue of work-related stress may feel like a difficult task for an employer. Whilst other business risks may traditionally have taken precedence, it is clear that there are significant benefits for employers and employees alike where work-related stress is managed in the same way.

For further information, or to obtain specific legal advice in relation to any questions arising from this article, please contact Ashleigh Birkett or Olivia Carroll.



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⁶ 2002 EWCA Civ 76

⁷ <https://www.hseni.gov.uk/articles/hsenis-role-managing-work-related-stressmental-well-being>