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WORKPLACE STRESS – WHAT STEPS CAN AN EMPLOYER TAKE TO MINIMISE THE RISKS?

With the current turbulent economic climate and the increasing costs of living, many are finding that the continuing strain of managing personal finances and the fear of job security have caused stress levels to soar. It is estimated that 13.8m working days are lost every year due to work-related emotional stress. Absenteeism is only one aspect of the problem. Stress can lead to a less productive workforce, poor decision-making and, ultimately, the possibility of legal action against an employer for negligence, discrimination and/or constructive dismissal.

We recognise that employers find it hard enough dealing with sickness absence arising from physical health – it is not surprising that they will need assistance when dealing with an employee with mental health problems. It is often the case that individuals with mental illnesses are absent from work for prolonged periods. Employers do not want to be seen to be placing additional pressure on such employees but, at the same time, research has shown that once an employee is absent from work for six weeks or more, it becomes increasingly difficult to get them back to work.

The Government has recognised the impact of mental health problems on business profitability and in October 2008 it announced plans to create a new £8m advice and support service for employers, especially smaller businesses, to encourage better management and support of people with mental health conditions.

Workplace stress can be caused by factors such as impossible deadlines, unrealistic targets and work overload or underload. Noise, glare and cramped conditions can be implicated too. Organisational issues, such as lack of communication, no feedback and poorly defined roles and responsibilities, can cause stress as can strained interpersonal relationships.

Employers have a common law duty to take reasonable care of the health and safety of employees in the workplace. The recent Court of Appeal case of *Dickins v O2 PLC* [2008] highlights the fact that once an employee has indicated that he/she is not coping, an employer needs to be proactive and respond to their concerns. Remedial steps such as sabbaticals, redistributing work, buddying, making swift referrals to occupational health, and seeking advice from an employee's GP should be considered and employed.

Key Recommendations

- 13.8 million working days are lost every year due to work-related stress
- Employers should take steps to reduce their exposure to legal action from stress related claims
- Work related stress can be caused by a number of factors
- Employers have both a common law and a statutory law duty to take reasonable care of the health and safety of their employees in the workplace
- It is recommended that employers employ both protective and preventative measures to reduce stress in the workplace

Employers also have a specific duty under the Management of Health and Safety at Work Regulations 1999 to make suitable and sufficient risk assessments of the risks to the health and safety of its employees, which includes the assessment of risks relating to mental health, as well as an employee's physical health.

Importantly, employers should consider, and be seen to consider, the impact of stress in the workplace by, for example:-

1. undertaking a stress audit and consultation with employees in an effort to determine any stress-related concerns so that steps can be taken to improve conditions;
2. using return to work interviews after sickness absence and performance appraisals to identify any underlying stress-related reason for absence and/or poor performance; and
3. training managers to recognise likely causes of stress, to identify the symptoms and to effectively manage stress.

Furthermore, employers should be aware of potential disability discrimination issues that may arise. Although stress itself does not amount to a disability, it is possible for a stress-related condition or, where the stress exacerbates it, a pre-existing condition to amount to an impairment. Examples of stress-related illnesses that have resulted in successful claims under the Disability Discrimination Act 1995 ("DDA") include clinically recognised depression, diabetes, schizophrenia and post-traumatic stress disorder. Assuming that there is a disability capable of protection under the DDA, employers are obliged to make reasonable adjustments which may include extending entitlement to payment during sickness absence, a phased return to work, a reduction in working hours, and reallocation of excessive work.

Problems are more likely to come to light, and be dealt with effectively, if an employer has in place a clear written policy on occupational stress and stress prevention as part of its safety policy. The policy should Acknowledge that work-related stress is not a personal problem, nor a weakness, but an issue that the organisation as a whole can address.

The new year is an opportune time to seek legal assistance with drafting a policy that suits an employer's organisational needs. Otherwise an employer is likely to be leaving it to chance and individual management decisions, which always present the possibility of potential claims. Even if ultimately the claims are not successful or are covered by insurance, significant management time may have been spent in dealing with the same. Given that it is not only the appointed Health & Safety Officer who is responsible for conducting assessments to reduce the impact of stress but all levels of the management team, it is vital to address this important issue now.

If you have any queries on any of the above please contact **Alison Loveday** at alisonl@berg.co.uk to discuss further issues. Alternatively you contact **Alison** on **0161 833 9211**. If you do not wish to receive further mailings please email alisonl@berg.co.uk with the words "unsubscribe" in the heading.

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- It is important that employees themselves are consulted and given adequate support
- Employers should ensure that they have policies in place to deal with health and safety and that those policies are effectively implemented
- Sickness absence should be carefully managed and assessed
- In respect of poor performance, proper and fair procedures should be followed
- Employers should be aware of their potential liability for disability discrimination claims and their obligations in this regard