

WORKPLACE STRESS

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“WE ARE ALL UNDER STRESS HERE”

The Health and Safety in Employment (HSE) Act 1992 now says “harm” and “hazard” includes the physical or mental harm caused by work-related stress. Thus employers must take all reasonably practicable steps to identify it, eliminate it if possible, and otherwise manage it.

As well the HSE Act now says employees must be given a reasonable opportunity to take part in initiating and implementing health and safety procedures, so in effect it requires some kind of dialogue with employees about workplace stress.

We don't yet know precisely how the NZ Courts will interpret these requirements. In the well publicised case of *DOL v Nalder & Biddle* (13/04/2005, Judge McKegg, DC Nelson, CRN04042500), a Nelson engineering firm pleaded guilty to an HSE Act prosecution for stress caused by overwork in the office, and was fined \$8000 plus costs plus reparation for the employee's medical costs. This was a wake-up call, but the Court never got to interpret the threshold set by the new law.

There is a DOL prosecution at present against Bay of Plenty District Health Board, but no outcome yet.

New Zealand personal grievance cases to do with stress, plus a set of high level UK Court decisions, indicate that:

- A certain level of stress is to be expected in the workplace.
- So “elimination” of stress would not usually be possible, meaning it is a hazard to be “managed”.
- The employee has to raise the problem, to show the employer “ought to have known” about it.
- But employers have to be on the lookout for signs of stress and keep abreast with the developing knowledge about it and how to alleviate it.
- This would include a duty to “be reactive at an early stage”.
- Different people have differing ability to handle stress, and different breaking points, so saying “we are all overworked” won't wash.
- Employers need to be careful about trying to pry into the stressed employee's private medical records.

One of the UK cases (*Barber v Somerset Country Council* [2004] UKHL 13) reached the House of Lords. Mr Barber was a senior maths teacher. The school was under financial constraints due to recent restructuring. He wasn't the only one under stress. He had taken 3 weeks sick leave caused (per the school's records) by "over stressed/depression". He called a meeting with the head teacher. She said: "All staff are under stress" and she suggested he was a malingerer looking for an early retirement package. He met the head and deputy head about it, who were more sympathetic and suggested he prioritise more carefully. At the same time he was giving more desperate messages to his own doctor, which the school did not know about. Then came a career-ending episode in the classroom: he lost control and started shaking a pupil. He had suffered a mental breakdown. He was 52 and was unable to work again.

Mr Barber sued the County Council which was responsible for running the school.

We know it was a difficult case because he succeeded in the lower Court, lost in the Court of Appeal, and succeeded in the House of Lords.

The House of Lords looked in particular at the events which should have put the school on notice that there was a serious problem and triggered its duty to look more carefully at it. They said that duty arose when Mr Barber separately saw each member of the school's senior management team about it. Mr Barber was an experienced and conscientious teacher, he had been off work for 3 weeks with no physical ailment or injury, his absence was certified by his doctor to be due to stress and depression. The Law Lords said the senior management team at the school should have made enquiries about his problems at that point and seen what they could do to ease them, instead of brushing him off unsympathetically (the head teacher) or sympathising but telling him to prioritise (the deputy head).

The Law Lords also made some suggestions which are helpful (not!) for budget-strained schools where "we are all under stress":

- That the school should have got in relievers.
- That an employer should not without very good reason seek an employee's permission to obtain more information from his medical advisers - as that would risk being an invasion of privacy.

The "stories from the front" that I hear about educational institutions in NZ indicate that both teaching and admin/support staff are quite regularly under high levels of stress, in particular caused by constant restructurings and budget cuts. A typical story seems to be: restructuring results in reduced resources. So duties reallocated to a smaller number of staff. Support staff can be cut back more than teaching staff. The resulting frustration/exhaustion gets taken out on the support staff who get criticised for not performing. Perhaps also involving active bullying or harassment of the admin staff. And frequently involving the "we are all under stress" message.

It is inevitable in the not-too-distant future that a NZ Court will rule on where the line is to be drawn on these issues.

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