A-Z Guide

STRESS AND FATIGUE

Contents

Overview

Stress is not a diagnosis; it is a general description of an employee's response to workplace stressors.

Fatigue is not in itself a hazard although it may cause an employee's behaviour to become hazardous.

You are obliged to ensure the safety of employees while at work.

Ensuring the safety of employees while at work requires you to identify and manage work-related stressors and to identify and manage hazardous behaviour caused by fatigue to protect employees from harm.

An employee with a stress-related condition may require vocational rehabilitation.

An employee with a stress-related condition should be reasonably accommodated in their employment.

Terminating the employment of an employee with a stress-related condition is permissible in some circumstances.

Introduction

Neither stress, nor fatigue, is a medical diagnosis. Stress, in particular, is not in itself harm or serious harm. Currently, there are only a few recognised medical conditions that are recognised as being caused by stress. In employment, the terms stress and fatigue should be treated as terms to be used loosely to indicate a negative physical or mental response to environmental factors in the workplace.

For the purposes of this guide, **stress** is an indicator of a negative response to stressors and means:

> *An interaction between the person and their (work) environment and is the awareness of not being able to cope with the demands of one's environment, when this realisation is of concern to the person, in that both are associated with a negative emotional response.*

Stress is an unavoidable reality of employment, and in fact, of life. Employers are not obliged to make work stress-free; instead your obligations are to endeavour to stop excessive stress resulting in harm to the employee.

And **fatigue** means:

> *The temporary inability, decrease in ability, or strong disinclination to respond to a situation, because of previous over-activity, either mental or physical: Health Work, Managing Stress and Fatigue in the Workplace OSH 2003.*

Prolonged and severe work-related stress, in some circumstances, is a recognised cause of physical and mental harm. The Health and Safety at Work Act 2015 defines a hazard as including a person's behaviour that has the potential to cause death, injury, or illness to a person, whether or not that behaviour results from physical or mental fatigue. That Act imposes a primary duty on employers to eliminate risks and hazards so far as is reasonably practicable.

The implications of this is that employers are obliged to consider their employees' behaviour as potentially hazardous where it may be affected by physical and mental fatigue and, that employers are obliged to prevent harm that is caused by work-related stress by identifying and managing known stressors.

This A-Z Guide provides some information on how stress and/or fatigue should be prevented and managed; however the information should not be used in any employment situation where the need for specialist advice is indicated.

Prevention of Harm

You are obligated to take all practicable steps to ensure the safety of your employees while they are at work. This obligation, phrased differently, is both a legislated duty and duty in the common law. It is legislated for in the Health and Safety at Work Act 2015, and an implied term of employment under the Employment Relations Act 2000 and the common law.

Hazard identification and management

Your obligations are to identify and manage hazards so as to provide and maintain a safe working environment for your employees. Fatigue may cause an employee to become a hazard to both themselves and others; aspects of employment may result in an employee's stress levels reaching such a state as to cause harm.

It is important to note that a person's behaviour can be affected by many other triggers other than stress and fatigue. Behaviour may also be affected by alcohol, drugs, emotional trauma, pain, illness, fear, anger or excitement.

It is also important to note that where behaviour is affected by any one or, any combination, of these triggers that it may be impossible to distinguish what the trigger is without careful investigation. For this reason it is important to focus initially on the hazardous behaviour and manage that as you would any other hazard.

Having identified and assessed the hazards in the workplace that may cause harm, you are then obliged to manage them. Hazard management requires you to consider first, the elimination, then where that is not practicable, the isolation, and where that is not practicable then lastly the minimisation of hazards.

An essential aspect of hazard management, particularly in this context, is understanding the factors or stressors that give rise to hazardous behaviour. While the immediate concern when faced with a person's potentially hazardous behaviour will be eliminating or isolating that behaviour, your comprehensive workplace assessment (this means looking beyond the physical work environment) will need to take into account the factors or stressors possibly involved in causing that person's behaviour.

WorkSafe has a guide to assist employers and employees with the management of stress and fatigue in the workplace. The information in this guide should be regarded as information on recommended best practice:

- Healthy Work - Managing stress and fatigue in the workplace: 2003

Refer to **the A-Z Guides** to **Health and Safety in Employment** and **Hazard Identification and Management** for more information.

Identifying hazardous work and behaviour

Every workplace and every type of work is different. People respond differently to the same events and influences.

The table (below) sets out some of the recognised causes of work-related stress (stressors) and some of the known effects of stress or fatigue on employees' behaviour. It should be kept in mind that, as already noted, these behavioural responses to stress and/or fatigue may occur in response to other triggers.

Workplace stressors

- Rigid work practices
- Poor communication
- Non-supportive work cultures / relationships
- Role ambiguity
- Role conflict
- Unrealistic levels of responsibility
- Lack of accountability / responsibility
- Uncertainty or stagnation
- Poor status or status incongruity
- Lack of control
- Physical isolation
- Interpersonal conflict
- Absenteeism
- Tedious or fragmented work
- Under-use of skill
- Constant customer contact
- Work over-load or under-load
- Time and performance pressures
- Shift work
- Inflexible working conditions
- Unpredictable or unsociable working times
-]Emotionally draining work with a high level of responsibility and accountability

Effects of stress/fatigue on behaviour - hazards

Reduced:

- Reaction times
- Concentration
- Productivity
- Inhibition
- Tolerance (emotional and physical)
- Morale
- Coordination (physical and mental)
- Sociability

Increased:

- Risk taking
- Violence (emotional, verbal, physical)
- Inaccuracy
- Absenteeism
- Illness / injury
- Irritability

Management of Stress-Related Conditions

Preliminary comments

As noted above, stress is not a diagnosis in itself. This is important insofar stress is not itself "harm" within the meaning of the Health and Safety at Work Act 2015. The discussion below applies where a medical diagnosis of a stress-related condition has been offered or given.

The Department Health Practitioner with the Ministry of Business, Innovation and Employment (formerly the Department of Labour) Occupational Safety and Health Service, Dr Chris Walls, has advised the medical profession that medical certificates intended to be presented to employers should provide information detailing actual diagnoses and detail possible workplace causes of employees' conditions. He has advocated this for two important reasons.

Firstly, in order for an employer to be able to investigate workplace problems (so as to manage them) it needs to know what those problems are. Health practitioners are able to assist employers by providing specific information about the cause, or believed cause, of the employee's stress-related condition by relating the actual diagnosis to workplace issues or stressors.

Secondly, employers can reasonably expect the attendance of their employees at work. Employees should not be absent without good cause. An employer is not expected to tolerate "stress-related" absences without more information; an employee who is "stressed" is not necessarily an employee who is unable to attend the workplace, particularly when it is remembered that "stress" is not a diagnosis.

You should keep this in mind when an employee presents you with a medical certificate that states that the employee has, or is suffering with, work-related stress.

Under the Accident Compensation Act 2001 the Accident Compensation Corporation (ACC) will only cover a mental injury in three circumstances:

- When it arises out of a physical injury that is covered under the Act; or
- When the mental injury (only for mental injuries suffered on or after 1 April 2002) is caused by an act of another person committing one of the sexually oriented offences listed under Schedule 3 of the Injury Prevention, Rehabilitation, and Compensation Act 2001; or
- When it is a clinically significant behavioural, cognitive or psychological dysfunction which occurred in response to a single event within the workplace within certain limited circumstances (only for mental injuries occurring on or after 1 October 2008). See the Employer Guide on ACC for further information.

Refer to the **A-Z Guide** to **ACC** for more information.

It is recognised, by the Health and Safety at Work Act 2015 and the courts, that stress can cause mental harm and physical harm. The kinds of physical harm that are stress-related may also occur entirely separately to, and be unrelated to, workplace stress.

Medical expertise

If an employee exhibits any behaviour, particularly where there is a marked change, that could indicate that the employee is stressed or fatigued, then you should investigate the matter further, as discussed above.

If an employee presents you with medical evidence of a diagnosis of physical and/or mental harm, then you are entitled to further information so that you can respond to the situation appropriately. This should include obtaining medical advice on the employee's current condition and how it should be managed from a medical perspective.

You do not have to accept an employee's unsupported and uncorroborated view on a matter involving stress and/or fatigue as determinative. If the employee is unable to work or, is able to work but there are restrictions on that, then you should seek medical advice on the employee's prognosis.

If an employee is absent from work for a prolonged period of time then you may, in some circumstances, require the employee to provide medical confirmation that the employee is fit to return to work before accepting the employee back at work.

Refer to the **A-Z Guide** to **Medical Examinations** for more information.

Workplace assessment

If an employee has been diagnosed with a stress-related condition, but is able to work, it will be necessary to review any prior workplace assessment. At the very least you should assess the employee's work practices and complete a comprehensive

workplace assessment to ensure that the risk of further harm is addressed.

A comprehensive workplace assessment should be completed before a harmed employee, who has been unfit for work for a period, returns to work.

Rehabilitation

If an employee affected by a stress-related condition has cover under the Accident Compensation Act 2001 for personal injury, then ACC will liaise with you about planning vocational rehabilitation for the affected employee.

As noted above, the Accident Compensation Act 2001 only covers mental injury in two limited circumstances, so in many "stress" cases there is no ACC cover. The purpose of vocational rehabilitation is to help an incapacitated employee maintain employment, obtain employment, or regain or acquire vocational independence. The employment must be suitable for the particular employee and appropriate to the employee's levels of training and experience (an injured pianist cannot be expected to work in a factory).

Refer to the **A-Z Guide** to **ACC** for more information.

Decisions Affecting Employment

At any one time you have obligations to your employee in respect of health and safety under legislation and the common law. Implied into every employment agreement are obligations of trust, confidence and fair dealing, and good faith.

If you are considering making any decision that will affect the employment of an employee because of a stress-related condition, you should consider the following topics. You are also strongly encouraged to seek advice to ensure you have a current understanding of the requirements of procedural fairness.

It is important to note that an employee who has a disability may, or may not, be incapacitated by that disability. If an employee's employment is affected to the employee's detriment (including termination) in any way on the basis of the employee's disability or incapacity, then the provisions of the Human Rights Act 1993, Employment Relations Act 2000, and/or Injury Prevention, Rehabilitation, and Compensation Act 2001 may apply.

Refer to the **A-Z Guides** to **Human Rights**, **Personal Grievances**, and the **Employment Relations Act 2000** for further information.

Disability

If an employee is disabled by a stress-related condition (the employee is disabled and has a "disability" within the meaning of the Human Rights Act 1991) but is able to continue working, perhaps with some adjustment to the work he or she performs or the way in which the work is performed, and it will not cause unreasonable disruption in the workplace for you to make those adjustments, then you must do so.

The Human Rights Act 1993 stipulates that it is unlawful to discriminate in employment on the basis of disability. If an employee is qualified for the work that the employee was employed for, and any disability that the employee has or develops can be reasonably accommodated, then it is unlawful to terminate the employee's employment or subject the employee to any detriment because of the disability.

Refer to **the A-Z Guides** to **Disability and Discrimination in Employment** for more information.

Incapacity

The term incapacity in relation to termination of employment usually refers to an employee's inability to work at all, rather than the employee's ability to work in a reduced capacity. That is how the term is used under this heading.

If an employee is incapacitated by a stress-related condition and this incapacity is supported by medical advice (the employee may also be "incapacitated" within the meaning of the Accident Compensation Act 2001) which establishes that the employee will be unable to work either indefinitely or for a prolonged period of time, then you may consider terminating the employment relationship on the grounds of incapacity.

There are guidelines, provided by case law, as to what employers must consider before reaching the decision to dismiss an employee for incapacity and rules of procedural fairness that must be followed.

Refer to the **A-Z Guide** to **Incapacity** for more information.

Liability

Prosecutions

As noted above, stress is not itself "harm" within the meaning of the Health and Safety at Work Act 2015, however harm, either physical or mental, may be caused by work-related stress. You cannot be prosecuted by WorkSafe NZ for the employee being "stressed".

The first successful prosecution for workplace stress occurred in the case of *Department of Labour v Nalder & Biddle* (Nelson) 13 April 2005

This case concerned an employee hired by Nalder & Biddle to assist in their accounts department. Almost immediately after this new employee started work, her two co-workers resigned. Inevitably the responsibilities placed on her were greater than had been expected. Three months after starting with Biddle Ltd the employee told the CEO that she was suffering chest pains and her GP had diagnosed that she was suffering work-related stress. The employee's principal complaint was of over work. The company took immediate steps to alleviate the problem; the CEO advised the employee to hire extra staff which she did, and told her to take time off work if she wished. In addition to the two staff hired soon after the complaint of stress was first made, the company organised with an external source to send staff to the company for the month's secondment. Shortly thereafter a third member of staff was recruited to the employee's team. The employee's stress did not however, abate. In addition to the workload, another problem was that the employee did not enjoy a substantial part of the work she was employed to do. Early in 2004 the employee had a breakdown at work, was taken home and never returned. The company met with her several times over the following months to discuss a safe return to work. The company offered what it believed was a less stressful job option without adversely affecting her terms and conditions of employment. During this time a medical report by a psychologist diagnosed that the employee had suffered mild to moderate depression arising out of work- related stress. These attempts at rehabilitation were not successful and the employee resigned.

The company pleaded guilty to taking some (as opposed to all) practicable steps under section 6 of the Health and Safety in Employment Act 1992 and was fined $8,000 and ordered to pay $1,300 reparation to their ex-employee. The company decided to plead guilty as it had taken some practicable steps but not all. The Judge decided there were no aggravating factors such as a dismissive or punitive attitude by the company, the company did not punish the employee with extra work and responsibilities. The stress was not caused by bullying or intimidation. The company had shown remorse, co-operated with authorities and taken the matter very seriously and had taken steps to alleviate the workload. The maximum fine was $250,000.

Employment Relations Act 2000

Personal grievances

Whether, or not, an employee suffers harm, an employee may raise a personal grievance on the basis of either unjustified dismissal or, unjustified action causing disadvantage in employment, if you fail to provide the employee with a safe workplace.

There have been many cases, under the Employment Relations Act 2000 and its predecessor, where a breach of the implied (and sometimes expressed) duty to provide a safe workplace has resulted in a finding that an employee has a personal grievance.

Stress and Fatigue

If you do not comply with your obligations under the Health and Safety at Work Act 2015 or do not respond appropriately to an employee's complaint of work-related stress, then you may be found to be liable under this Act to your employee.
In *A-G v Gilbert* [2002] 1 ERNZ 31 the Court of Appeal upheld the Employment Court's finding that the employer's failure (5 distinct breaches) to provide a safe place of work and protect Mr Gilbert from harm caused his unjustifiable constructive dismissal.

The important points from the Employment Court's decision are (emphasis added):

- The employee **resigned in response** to the employer's breaches of contract.
- The employee's injuries arose, not only from stress necessarily inherent in his work, but from **avoidable additional pressure** of workload, office dysfunction, and inadequate resources.
- The injuries and losses suffered by the employee were **foreseeable consequences** of the employer's breaches of contract.
- There was little or no doubt that the employer was in breach repeatedly over a long period of a number of **contractual obligations** in the health and safety field*: Gilbert v Attorney-General in Respect of the Chief Executive of the Department of Corrections* [2000] 1 ERNZ 332.

The important points from the Court of Appeal's decision are (emphasis added):

- The employer's **breach must have been a material factor in the loss** suffered by the employee. However, it did not need to be the sole cause. Whether a breach of contract was a material cause of the loss suffered was a question of fact.
- It would be contrary to the objects of the Health and Safety in Employment Act 1992 if an employer was not required to take **reasonably practicable steps to avoid causing psychological harm.**
- **Foreseeability of harm and its risk** would be important in considering whether an employer had failed to take all practicable steps to overcome it. Whether workplace stress was unreasonable was a matter of judgment on the facts. It might turn upon the nature of the job being performed as well as the workplace conditions. The employer's obligation required **reasonable steps were proportionate to known and avoidable risks.**
- If the employer unreasonably failed to take all steps practicable to remove or manage the risk and it was reasonably foreseeable that any employee might have suffered harm as a result, then the employer would be in breach of the term of the contract to maintain safe working conditions.
- The Employment Court had evidence upon which to conclude that the employer was in breach of the employment contract because it **failed to take all reasonable steps to avoid the foreseeable risk of harm to** the employee: *Attorney-General v Gilbert* [2002] 1 ERNZ 31.

Since the *Gilbert* decision there have been other cases involving claims brought by employees against their employers for compensation for harm suffered as a consequence of workplace stress.

In *Davis v Portage Licensing Trust* [AC 26/06; 04/05/2006; Judge Travis] Mr Davis worked as a barman/cook at a tavern owned and operated by the Portage Licensing Trust ("PLT") until his employment was terminated whilst he was absent from work on long term medical leave. During his employment, Mr Davis was subjected to three armed robberies which resulted in him suffering post traumatic stress ("PTS"). Mr Davis took time off work at the direction of his doctor. During the long term sick leave PLT paid to Mr Davis all annual leave entitlements and sick leave and when that was exhausted PLT put Mr Davis on unpaid leave. Furthermore PLT paid for Mr Davis to attend counseling for the PTS for almost 18 months after Mr Davis went off work on long term sick leave but ceased payment for counselling after Mr Davis was unsuccessful in obtaining cover from ACC. After almost 27 months off work PLT declared Mr Davis' employment terminated but did not notify Mr Davis of this fact. Mr Davis found out that his employment was terminated almost three months later. Mr Davis was not put through any training for dealing with armed robberies during his employment nor did PLT have any security cameras installed until after the second robbery. Furthermore PLT had not proactively taken steps towards ensuring adequate time off work for rest and recuperation was taken after the first

two robberies. The Court found that PLT either knew or ought to have known and foreseen that there was a real and substantial risk of an armed robbery at the tavern, which could endanger the health and safety of their staff. The Court also found that PLT had failed to take all reasonably practicable steps to avoid reasonably foreseeable harm immediately after the first robbery which could have either avoided the subsequent robberies or have reduced their effect on Mr Davis. The Court emphasised that PLT had failed to provide reasonable safety measures in terms of: adequate lighting, operational cameras, an adequate alarm system, including a panic button or silenced alarm, signage indicating that money was not kept on the premises, adequate training on what to do in the event of an armed robbery and training in the use of security procedures, in particular the use of the duress code procedure, which was then in place with the alarm monitoring service. The Court also found that PLT had failed to take reasonably practicable steps to minimise the effects of the three robberies on Mr Davis. The Court ordered the payment of wages from December 2005 back dated to June 1999, future economic loss for eighteen months, past medical and counseling expenses in relation to PTSD, $45,000 for non economic loss and leave to apply for interest on all awards.

Please note here the Court stated that the employer should have known about the Guidelines for the Safety of Staff from the Threat of Armed Robbery published by OSH and it ought to have followed these in relation to the prevention of, and the follow-up to the armed robbery.

In *King v Far North Holdings Ltd* [AA 104/06, 3 /4/2006, R Arthur] a security officer claimed that he had been constructively dismissed when he found himself psychologically unable to resume work after being kidnapped by an armed robber. The employee was suffering severe anxiety and depression, consistent with post traumatic stress disorder. The employer was alleged to have breached its obligations by not providing him training on how to deal with the aftermath of an armed robbery, not providing him with proper support and counseling and making inaccurate reports to the Police about him. The Authority found he had not been constructively dismissed, however the employee had an unjustifiable disadvantage grievance. There was a lack of a safe system of work by not providing two guards transporting case as normal practice; providing misleading advice about what to do next and terminating sick leave prematurely. He was awarded $4,000 compensation as well as reimbursement for psychological assessment and doctor fees of $1,020.

In *A v Attorney-General* [WA 196/05; 22/12/2005] the employee was a social worker employed by Child Youth & Family Services ("CYFS"). In 2003 during study leave the employee became ill with a major depressive episode. The employee told her psychologist she was having problems coping at work. From 15 July to 4 December she worked 12 weeks the last five weeks on reduced hours. The CYFS learned that the employees illness was work related in November 2003. The hours or work were reduced following a meeting with her. The employee took further sick leave less than months later and raised a personal grievance alleging the supervision was inadequate and her work was hazardous. The Authority held that CYFS had not breached its obligations to the employee it had taken a number of steps to assist her For example it had provided supervision to the employee as to her workload and provided services to assist her. However the Authority held CYFS had breached its duties in one respect it should have removed her from frontline duties immediately after receiving a medical certificate that she should be removed from "critical frontline work". Instead it took ten days to do this. The Authority awarded the employee $15,000 compensation for hurt and humiliation for this breach.

In *Kingston v Gen-I Ltd* [CA 67/05; 12/05/2005; Y S Oldfield] Mr Kingston was employed as sales director for Christchurch based Gen-I Limited. Mr Kingston claimed Gen-I Ltd breached terms of his employment agreement, namely the obligation to provide for his health and safety, because Mr Kingston had been suffering depression that he claimed was a foreseeable result of workplace stressors. The Authority's held that Mr Kingston was unable to establish the necessary causative link between his work and the harm he suffered. The Authority noted that unlike the other stress-related harm cases where the employees had been successful, Mr Kingston was not employed in a position where the work performed was "of such a nature and volume" that there was a "clear risk" of harm. It also noted that the medical evidence suggesting Mr Kingston's work was the cause of his illness was not definitive. The evidence was to be treated with caution as it was based on Mr Kingston's "self reporting". There was insufficient evidence for the Authority to conclude "the job was even part of the problem for Mr Kingston" prior to his breakdown in 2002. The Authority held Gen-i took reasonable steps to remedy the situation after his breakdown. In particular: it liaised with Mr Kingston's medical practitioner as to a return to work; it permitted a return to work on a part time basis; Mr Kingston was given "additional and generous paid sick leave; an additional sales person was employed; discussions were held with Mr Kingston as to the possibility of him moving to a different role within the organisation. Gen-i Limited had not breached any duty it owed to Mr Kingston that prior to 2002 he was not exposed to any workplace stress that was unreasonable , nor had he raised any particular concerns with Gen-i Limited.

In *Nilson-Reid v Attorney-General in respect of the Director-General of the Department of Conservation* [CC4/05; 7/03/2005; Judge Travis] Ms Nilson-Reid claimed that she was forced to resign due to workplace stress. She had lived in Mount Cook village with her husband, working as a tourist adviser for DOC in Mount Cook National Park. Although her early performance reviews were good, problems emerged as her workload increased. The company experienced very high workloads over the summer months, and during this time Ms Nilson-Reid slipped behind her project work. Around this time her husband became a self employed tour operator at Mount Cook. Her employment contract required her to disclose any potential conflicts of interest.

The company had some suspicions she was using company resources to promote her husband's business and they monitored her. She began showing signs of depression that the doctor attributed to stress. Evidence was introduced to show she was concerned about the financial affairs of her husband's business. DOC attempted to manage the workload issues, and took on temporary staff to help with increased summer work load. Steps were also taken to put her on a time stress management course as well. The Court held that there was not enough evidence to show constructive dismissal. The Court commented that in order to prove an employer had failed in its duty to provide a safe system of work that reasonably avoids harm, it must be shown that the employer knew or ought to have known the risks and failed to act to avoid them. Ms Nilson was experiencing personal issues that she did not reveal to her employer. None of the work related matters made her breakdown foreseeable to DOC.

She was therefore not awarded any money for stress but the Court did find that she had been unjustifiably disadvantaged in the way DOC handled the conflict of interest issue from the ongoing suspicions. She was awarded $3000 for this.

In *Koia v Attorney-General* in respect of the Chief Executive of the Ministry of Justice [AC8A/04; 14/09/2004; Judge Shaw] Mr Koia challenged an Authority decision that he had not been constructively dismissed and therefore did not have a personal grievance against his employer, the Ministry of Justice. Mr Koia claimed that he had resigned as a result of workplace stress he suffered in his role as Caseflow Manager for the Family Court in Rotorua and Taupo. He produced medical evidence that he was suffering from workplace stress and that there was no doubt that he would have suffered serious harm had he remained in the situation. The Court held that the Ministry had a duty not to expose Mr Koia to unnecessary risk of psychological harm reasonably avoided. Factors considered were the nature of the job being performed and the workplace conditions. The Court held that the nature of Mr Koia's job was inherently and continuously onerous and there were significant inherent stressors in the workplace which had a demoralising effect on him. However the Court held that the department had not breached its duty to maintain a safe workplace as they had taken reasonable steps to reduce the risk of harm. Changes were introduced with long lead in times and training programmes and there were regular meetings where managers could discuss their problems. Mr Koia also had the support of the Rotorua Court manager to relieve him of direct responsibility and temporary relief when necessary. Mr Koia did not take advantage of the regular visits of the workplace support people and did not take up the manager's suggestion that he should go to a stress management course therefore he lost valuable opportunities to learn to manage the stress he was undoubtedly feeling. The stress he felt was a significant contributor to his decision to resign but it was not caused by the employer's breach of duty to provide a safe workplace.

In *Whelan v A-G* in respect of Children & Young Person Service [2004] 2 ERNZ 554, Ms Whelan had worked for the defendant for 17 years in a number of different social work positions. Ultimately, she became a risk assessment supervisor which involved supervising a team of social workers responsible for assessing the risk of abuse of children. After 2½ years in that role she felt tired, depressed, and burdened by the front line work. She had told her manager that she wanted to transfer out from these duties. She applied for, and was granted, a bursary for 2 years full-time study. During her study leave she had coronary problems which may have been partly stress-related. Before returning to work, Ms Whelan informed her then manager that she did not wish to return to front line supervision work. In spite of her wishes, she was assigned by her new manager back to supervising risk assessment. At the time, the workload was increasing because of the increasing numbers of at risk children being referred to the defendant. There were also problems in providing Ms Whelan with an adequate team of social workers to supervise. She was required to provide counselling to her own staff, and also to take the burden of their casework until replacements could be found. A request to transfer out of risk assessment was blocked by the manager. Reports by practice consultants concerning social work practice in the area commented negatively on the stress on supervisors. There was an ever growing unallocated cases list which placed considerable burden on the supervisors who had to manage that list and ensure that no cases became critical and children did not suffer significant abuse or worse. Ms Whelan had written a number of memoranda indicating that she was stressed and concerned and requesting outside counselling however there were problems in providing such counselling. Ms Whelan had a major health collapse, which specialists on both sides attributed to her work environment. After a period of sick leave, during which outside counselling was provided, she sought, and was granted, retirement on medical grounds at page 47. Ms Whelan alleged that as a result of the breaches by the Children's and Young Person's Service, she had suffered serious psychological damage which forced her early retirement on medical grounds, and that this had affected her ability to work in her chosen field and her future professional development. The Court held that the employer ought to have known that Ms Whelan's condition was deteriorating, and that she was no longer coping. Her collapse was reasonably foreseeable, and may have been avoided by reasonably practicable steps. Her claim was allowed and it was left to the parties to negotiate a payment of appropriate compensation.

Strikes

Stress and Fatigue

The Employment Relations Act 2000 stipulates that employees may strike if they have reasonable grounds for believing that the strike is justified on the grounds of safety or health.

In *Tranz Rail Limited v Rosson and others* (Unreported) WC 30/03; 30 September 2003, the Employment Court granted an interim injunction ordering striking employees back to work because they and the Union did not have reasonable grounds to justify strike action on the grounds of health and safety. The strike had occurred because of "significant" and "high" levels of stress which the Union considered hazardous.

Refer to the **A-Z Guide** to **Health and Safety in Employment** for more information.

Conclusion

Stress and fatigue do not occur in the workplace in isolation. There are many factors that contribute to the development of a stressed employee and a fatigued employee. Many of these factors are identifiable and manageable.

It is important not to belittle any claim of workplace stress or fatigue, but is equally important to keep the issues in perspective and to investigate each claim or problem as you would any other workplace incident.

Remember

- **Always call AdviceLine to check you have the latest guide**
- **Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.**
- **Use our AdviceLine employment advisors as a sounding board to test your views.**
- **Get one of our consultants to draft an agreement template that's tailor-made for your business.**

This guide is not comprehensive and should not be used as a substitute for professional advice.

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