

Legal update - Work-related stress - deep breaths all round

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17 February 2015

As a group, employers, employees, health professionals, lawyers and other representatives have got to improve how they deal with work-related stress - simple as that.

Employers often miss or disregard the signs, or take an overly defensive or negative stance when stress is mentioned. Employees similarly miss or disregard the signs and become very ill as a result, or, at the other end of the spectrum, too readily throw stress up as a reason not to engage. Health professionals sign off employees as needing leave "due to work-related stress", even though stress is neither an illness nor an injury, and rely entirely on what the employee has reported without reference to the employer. Often leave is certified for a period of two weeks or more, which may be necessary, but is alarming for employers as it suggests that the employee is suffering from a very serious illness - which the employer is alleged to have caused. It can also be unhealthy for the employee to be out of the workplace for such a long period, especially if there is an unresolved issue waiting to be addressed on their return. And lawyers unhelpfully can use stress leave as a lever and a tactic.

The combination is very damaging to employment relationships. It has also led over time to a degree of cynicism about 'stress leave', casting doubt on genuine cases.

Stress is not a diagnosis

In a recent case, *Metcalfe v Ian & Judy Gane t/a Barclay Engravers*, the Authority awarded the employee, Ms Metcalfe, 14 weeks' lost wages and \$10,000 compensation for hurt and humiliation, after she resigned due to her stressful work environment. The Authority found that Ms Metcalfe had been constructively dismissed, and that she'd been badly affected by both the actions and inaction of her employer.

The case itself was unremarkable, though the compensation awarded was significant for a small business. There were frequent altercations at work between the married owners, which Ms Metcalfe found difficult. She also had concerns about the way that cash was managed in the business, for which she was responsible. She requested that a new system be introduced, which caused friction between Ms Metcalfe and one of the owners - the Authority described the working environment as "hostile". Ms Metcalfe raised concerns, which were acknowledged but not satisfactorily addressed. Ms Metcalfe was later put through a four-and-a-half hour performance review, which was continued a fortnight later. Ms Metcalfe left the review feeling unwell and did not return. She remained on unpaid sick leave for about six weeks, eventually resigning.

The Authority's decision received a lot of publicity, primarily because it said that Ms Metcalfe's GP had "diagnosed workplace stress". Whether that was the precise words used by the GP is unclear, but the diagnosis was criticised in the media for being unhelpful and subjective. The Medical Council Chairman responded in defence, saying that stress-related symptoms are a legitimate reason to see a doctor, and that a period off work may be what is needed to aid the employee back to better health.

In our view, both critiques are correct. If a person is suffering from stress-related symptoms, he or she may well need time off work. It would assist however for doctors to describe the situation more accurately.

WorkSafe's website contains helpful guidance on work-related stress, including a '[Guidance Note for General Practitioners - Certification of patients complaining of work-related "stress" problems](#)'. It recommends that the relevant medical condition be referred to and that the employee's beliefs about the potential causes be recorded, for example:

My patient [name] is suffering from [diagnosis] (eg depression and acute anxiety). He/she attributes this to the following workplace factors: [factors].

The Medical Council of New Zealand also publishes helpful guidance.

Guidance

From an employer's perspective, it would assist for medical certificates to be prepared in this way. This however is a counsel of perfection, and not the real issue. The core question that all parties need to ask is whether leave is needed, and, if so, how much and why.

GPs should of course recommend the time away they think is needed, but they should take care not to overstate this. Two weeks has become very common, which is a long time to be away from work due to illness.

Employees need to use sick leave for periods when they are truly unable to work due to illness. If they are feeling overworked or stressed, maybe a holiday or changes at work are the answer. If they receive a medical certificate for two weeks' leave, they may want to consider calling or emailing the employer to advise that they will update the employer on how they are feeling in a few days and may come back sooner. Ultimately employees need to identify what is causing the stress and take steps to address that.

If the employee is feeling stressed due to workplace factors, such as a performance management or disciplinary process, it may well assist to have a short break away. It is generally advisable not to make accusations about the process or to label it bullying in the heat of the moment. Employees should take time to think about this, and ideally communicate with the employer when they are feeling less stressed - especially on matters they know will be controversial.

And employers need to stay calm (as trite as that sounds). Performance management and disciplinary processes are stressful, and employees will not always be at their best when responding to them. Medical certificates will sometimes appear unfair or overstated. All of this is to be expected. So, if you receive a medical certificate that says the employee is off work for two weeks due to work-related stress, an email or call to the effect of: "I'm sorry you're not feeling well, I realise the process is stressful. I'll check in with you in a few days to see how you're getting on, please let me know in the meantime if anything changes or you need anything from us", may be better as a first step than insisting on the process continuing, making no contact at all, or sending a letter in legalese demanding a great deal of personal information about the employee's health and the causes of the stress. While you may need more information or to take other steps, that can follow.

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