



THOMPSONS  
S O L I C I T O R S

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STANDING UP FOR YOU

Occupational Stress Claims

- Common Law - Section 11 of the Limitation Act 1980 states that the limitation period for personal injury cases is 3 years from either the date on which the cause of action occurs or from the Claimant's date of knowledge, whichever is the later.
- The Protection from Harassment Act 1997 - You have 6 years from the date on which the first act of bullying/harassment occurred.

- Proving Liability & Causation - These are legal terms which effectively mean that you must prove that:-
- The problem arose as a result of a breach of the duty of care owed to you by the employer.
- The employer's duty is to take reasonable care, taking into account the severity of the risk of harm and the cost and practicality of preventing it.
- It is not negligent for employees to work hard or to face stressful challenges at work. Even if an employer raises concerns about the work situation, the employer is not necessarily compelled to change the situation unless it is clear that a failure to do so will result in injury ensuing.

- Even if we are able to prove that a breach of duty has occurred, it is usually necessary to prove that either:
  - there had to have been a previous absence from work due to the similar difficulties; or
  - that a specific complaint had been made in order for a court to accept that the onset of a psychiatric illness, as a result of work, was imminent and that the employer should have realised that such an injury would occur.

- In order to make a claim for work related stress it must be confirmed by a psychiatrist that the person is suffering from a recognised psychiatric condition.
- It is unlikely that such a diagnosis will be given unless the person has had time away from work and received medical treatment for the condition.
- If they have suffered from any personal traumatic events at the time when the symptoms commenced, it may be difficult to prove that the condition occurred as a result of work related issues.

- The employer could have reasonably foreseen that the person would suffer from a psychiatric condition.
- Evidence of a previous absence from work due to work related stress, or a specific complaint of the risk of a psychiatric illness occurring as a result of work will usually be required to prove foreseeability

- The first legal case to succeed was Walker -v- Northumberland County Council [1995] IAER 737
- Other relevant cases
- *Hatton -v- Sutherland [2002] PIQR P21*
- *Barber -v- Somerset County Council HOL 2004*
- *Hiles -v- South Gloucester NHS Primary Care Trust 2007 High Court*
- *Daw -v- Intel Corporation UK Limited (Court of Appeal) 2007 2AER 126*
- *Dickins v O2 Plc – CA 2008 EWCA CIV 1144*

- The Protection from Harassment Act 1997 created the statutory tort of harassment.
- It was introduced to combat the problems of stalking.
- It had not been considered that it would provide a remedy to bullying in the workplace until the case of *Majrowski*.

# The Protection from Harassment Act 1997

- The purpose of the Act was to protect victims of harassment whatever form the harassment takes.
- **SECTION 1** prohibits harassment in these terms:-
- A person must not pursue a course of conduct:
  - a) which amounts to harassment of another, and
  - b) which he knows or ought to know amounts to harassment of the other

- **SECTION 2** states that for the purposes of this section, a person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.
- **SECTION 3** of the Act affords a victim a civil remedy for breaches of Sections 1 and 2 above. It covers not only actual breaches but also threatened breaches.

- There are three statutory defences under Section 1(iii)
- The most relevant for workplace cases is the third which states "that in the particular circumstances the pursuit of the course of conduct was reasonable". It should be noted that in the Court of Appeal stated that **"reasonable and proper criticism of an employee's poor performance"** would come within the ambit of this defence.

- How are Courts applying the test of Harassment?
- Majrowski -v- Guys & St Thomas' NHS Trust Hol 2006
- Hammond -v- INTC Network Services (1/11/2007 High Court)
- Conn -v- City of Sunderland ( CA November 2007).

# Harassment conclusion

- The conduct complained of must be :-
- serious, capable of amounting to a Criminal Act
- must have occurred on more than one occasion
- must not simply amount to a disagreement between two work colleagues
- there must be an intense connection between the conduct and the job of work
- must not be considered to be reasonable and proper criticism of poor performance.

- The general rule of Res Judicata is that where a claim has been brought in one jurisdiction it cannot be brought in another.
- a) Abuse of Process
- b) The Case Law
- *Sheriff –v- Klyne Tugs (Lowestoft) Ltd [1999] IRLR 481.*
- *Johnson – v- Unisys [2001] IRLR 279,*
- *Eastwood & Another –v- Magnox Electric PLC and McCabe –v- Cornwall County Council [2004] IRLR 733.*