UNISON
the public service union

STRESS CLAIMS FAQ

FAQ and case study examples to help branches, regions and members

Protection from Harassment Act case examples

1. Our member does not get on with her manager. The manager criticises her work and she has now started a formal capability procedure. Our member is stressed. She thinks that the criticism is unfair and has told her manager that it is causing her sleepless nights. She goes off sick and has not returned to work. Her sick notes say she is off with work- related stress and anxiety. She wants to bring a claim for personal injury.

Although our member reported that she was losing sleep and thought the situation was unfair, the employer was not told that she was likely to suffer injury until she went off sick - her illness is unlikely to be 'foreseeable' to them. Criticism of performance is not usually regarded as negligent. A personal injury Court will not normally interfere with an employer's reasons for pursuing performance or disciplinary investigations. In addition, our member has not been diagnosed with a psychiatric condition. This case is likely to fail at common law for these reasons.

Under the Protection from Harassment Act, our member does not need to show that she has a recognised illness or that it was foreseeable to her employer. However, the Court will not usually regard performance/ capability or disciplinary proceedings as 'harassment'. Many people will not agree with criticism of their work. Cases such as this will only be regarded as harassment if there is real evidence that the proceedings have been brought without any justification or if our member's work has been excessively scrutinised with the intention of harassing her – in practice this is very rare.

Although there is no personal injury case, there might be employment issues here which need to be considered by the union to ensure that the employer follows the correct procedure and carries this out fairly.

2. Our member was investigated for misconduct at work. He always said that he was innocent but another member of staff had reported him for not following procedures correctly. Eventually he was told that the disciplinary charges had been dropped, as there was not enough evidence to show he had done anything wrong. Our member lodged a grievance about his and feels bullied and harassed

Although this situation can be distressing, the employer's actions do not satisfy the requirements for 'harassment' under the Protection from Harassment Act. Reasonable criticism of performance or disciplinary investigations provide a defence for the employer to allegations of harassment. Even if disciplinary investigations are dropped or an employee is exonerated, this does not mean that the process itself will amount to harassment. A personal injury claim is unlikely to succeed in these circumstances.

Again the union should be involved to support the member through the disciplinary process and to ensure the employer carries out the procedure fairly and in accordance with any internal procedures.

3. Our member has worked for her employer for 10 years and has always been based in the same place. Due to restructuring she is told that her new office will be 15 miles away and some of her work tasks will change. It will take much longer to travel to her new office and it will be difficult for her to manage her childcare with the extra time involved. Our member has not had any problems with stress before but becomes anxious, run down and is constantly tired. Her manager is always picking on her for being late, not meeting deadlines and she feels harassed. Eventually she goes off sick with stress.

As there is no history of previous psychiatric illness, the harm is not foreseeable to the employer. Changes to work place or work type are not negligent or in breach of duty in these circumstances and the case would not succeed at common law.
The employer's behaviour is not 'harassment' under the Protection from Harassment Act. It is not a serious course of conduct pursued by the employer in order to alarm or distress the employee. When difficulties like this arise, it is important

to try and resolve them by industrial means and to consider whether or not the employer is complying with employment legislation, as a personal injury case is unlikely to succeed. This potentially could be an employment tribunal claim, the childcare issues raise a question about indirect sex discrimination.

4. Our member is Polish but has worked for his employer in the UK for 3 years. He has a good work record and has always had good appraisals. However, his new manager constantly undermines and belittles him, telling him his work is not up to scratch, often in front of other colleagues. The manager calls him racially offensive names and makes jokes about him in front of colleagues. Once, when our member asked the manager to stop this behaviour, the manager threatened to 'shut him up for good'. Our member was frightened and thought the manager was going to hit him. On another occasion he found a threat on his locker at work, which he thinks the manager wrote.

Bullying of this nature should be referred to the lawyer for advice. There might be justification for criticism of our members work but taunts of a racial nature or threats of violence are examples of behaviour which the Court could regard as harassment.

It is important to also consider whether or not there might be a claim to the employment tribunal where there has been racially motivated behaviour. In this particular case it would be very important to swiftly refer this matter for employment tribunal advice as this is a race discrimination case where our member has been subject to overt racism in the workplace.

Common law case examples

5. Our member is asked to be the acting manager of his department until a permanent replacement is found. He is worried about this as he has never been a manager before, but he is promised training and that he can give some of his own work to other members of staff to allow him time for his management role. Within a few weeks of starting, our member is still doing all of his own work but having to work long hours to fit in all the management tasks. He does not know how to do some of these jobs and keeps reminding his manager that he needs training, but this isn't organised. Our member is regularly working 12 hours a day in the office and is taking some work home, as he can't complete it in time. Eventually he cannot cope any longer and he goes off sick with stress. He is away for 3 months. When he comes back, he does not have a return to work interview or assessment and things carry on as before. Our member complains again that he isn't coping but nothing is done. After another 6 weeks at work, he goes off sick again.

It may be possible to show that our members illness was foreseeable, as he has been off work before. The lawyers would then look at what the employer should have done when he returned, what they actually did and assess whether or not their behaviour is likely to be seen as negligent. Cases like this should be referred to the lawyer for advice.

Frequently asked questions

A. I have been complaining about my work for months and everyone knows I work long hours. My employer must have known that I was stressed. Why do I not have a case?

Although workers often think that their illness should have been 'obvious' to the employer, the law does not accept that. Cases will be very unlikely to succeed unless the employee has been away from work before with work related stress, which the employer knew about. As such only second absence cases will be referred through our scheme.

B. The employer has not followed its own internal procedures – how can I not have a claim?

Failing to follow an internal procedure or policy correctly does not mean that a Court will find the employer negligent in a personal injury case.

Delays in processing a grievance or not following an internal policy correctly are common but Courts do not neccessarily accept that these will present a risk of illness to members of staff or that it is negligent not to follow them to the letter. It is also difficult to establish that delay or failure to follow the procedure was the cause of illness, as opposed to the reasons for the procedure being invoked.

There might be grounds for a grievance or potential employment law claim depending on the circumstances – the member should be advised about that.

C. Can my employer do what they like and get away with it?

It is common for employees to feel this way, particularly where the employer does not make the changes they ask for or where they feel that they have been treated unfairly. It is important to remember that a claim for personal injury can only be made where the legal tests can be met. Very few cases can be pursued but this does not mean that the lawyers condone what the employer has done – simply that the case does not satisfy the very difficult legal tests.

Again there might be potential employment law issues here so the member should be advised about any other means of addressing the problem.

D. I am trying to negotiate with my employer to see if they will make changes or offer me an exit package. Can you write a letter to put pressure on them?

The lawyers can only recommend that a case is pursued where there are reasonable chances of it succeeding. It is not possible to send speculative letters to the employer to try and influence discussions which might be continuing in the workplace.

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