

## Stress at work – An employer's duty to act:

### Dickens v O<sub>2</sub> plc [2008] EWCA Civ1144

The House of Lords case of *Hatton v Sunderland* [2002] ICR 613 led employers to believe that simply offering a counselling service would discharge their duties to prevent employees being injured by stress at work. The recent case of *Dickens (D) v O<sub>2</sub> plc* suggests that this is not the case and has clarified the action employers should take to prevent occupational stress leading to employee stress claims.

D had complained to her managers for many months that she could not cope with her work levels and was struggling to come to work each day. In April 2002 she asked her line manager for a six month sabbatical because she did not know how long she could continue before she became ill. Her line manager suggested she use O<sub>2</sub>'s counselling service and occupational health department. However, D already received counselling through her GP and before the occupational health department offered assistance, she became ill and never returned to work.

D's claim was successful and she was awarded £109,754.22 for psychiatric injury negligently caused by excessive stress whilst working for O<sub>2</sub>.

The following guidance can be taken from the case:

1. Employers should watch for signs making it reasonably foreseeable that an employee is at risk of impending psychiatric harm caused by occupational stress.
2. Employers have a duty to take prompt remedial action to assist employees who show such signs.
3. Appropriate remedial action depends on the facts of each case, but may include:
  - a. offering access to a counselling service;
  - b. referral to an occupational health specialist;
  - c. chasing such referrals to prevent unnecessary delays;
  - d. allowing paid time off work;
  - e. allowing sabbaticals; and/or
  - f. investigating other action that can be taken to reduce stress.

A court will assess what a reasonable employer should have done in the circumstances and so the above should be seen as helpful guidance rather than a check list.

4. An employee's continued willingness to attend work will not affect an employer's duty to take action.
5. Occupational factors need not be the only causes of the psychiatric harm. If such factors make a material contribution to the employee's condition, the employer will be found liable.

Any questions? Contact Employment Partner Dan Peyton [danp@gmrlaw.com](mailto:danp@gmrlaw.com)

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