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 as 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).

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 merely "stressed".

The first successful prosecution arising from workplace stress occurred in the case of *Department of Labour v Nalder & Biddle* (Nelson) 13 April 2005. In this case, almost immediately after Nalder & Biddle's new employee started work, her two co-workers resigned. Inevitably the responsibilities placed on her were greater than had been expected. Three months after her start, the employee told the CEO that she was suffering chest pains, and her GP had diagnosed that she was suffering work-related stress.

The company took immediate steps to alleviate the problem like increasing capacity, in the forms of hiring new staff and bringing in external secondments, and allowing her to take time off work if she wished. However, the employee's stress did not abate. In addition to the workload, another problem was that the employee did not undertake a substantial part of the work she was actually employed to do.

Early in 2004 the employee had a breakdown at work, was taken home and never returned. The employee had suffered mild to moderate depression arising out of work-related stress. 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. These attempts at rehabilitation were not successful and the employee resigned.

The company pleaded guilty to not taking all practicable steps under section 6 of the Health and Safety in Employment Act 1992. This is because it agreed it had only taken *some* practicable steps. It was fined $8,000 and ordered to pay $1,300 in reparation to their ex-employee. 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.

Personal Grievances under the Employment Relations Act 2000

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 where a breach of the implied (and sometimes expressed) duty to provide a safe workplace results in an employee having a personal grievance.

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.

Case law

In *A-G v Gilbert* [2002] 1 ERNZ 31 the Court of Appeal upheld that the employer's failure (in 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.

Stress and Fatigue

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.

Davis v Portage Licensing Trust [AC 26/06; 04/05/2006; Judge Travis]

While Mr Davis worked the Portage Licensing Trust's tavern ("PLT") he was subject to three armed robberies, causing him 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, then put him on unpaid leave. It also paid for Mr Davis to attend counseling for his PTS for almost 18 months. However, it ceased its payments 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. He only found out almost three months later.

Mr Davis was not put through any training for dealing with armed robberies during his employment. PLT only installed security cameras after the second robbery. Furthermore, it had not proactively taken steps towards ensuring adequate time off work for rest and recuperation after the first two robberies.

The Court found 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. It also found PLT failed the following:

- 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.
- To provide reasonable safety measures, which were:
    - 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 an armed robbery and training in the use of security procedures. In particular the use of the duress code procedure it had now put in place with the alarm monitoring service.
- To take reasonably practicable steps to minimise the effects of the three robberies on Mr Davis.

The Court felt the employer should have known about the *Guidelines for the Safety of Staff from the Threat of Armed Robbery* published by OSH, and ought to have followed these regarding prevention and follow-up of armed robbery.

The Court ordered the payment of Mr Davis' lost wages since his dismissal, future economic loss for eighteen months, past medical and counseling expenses in relation to PTSD and $45,000 for non economic loss.

King v Far North Holdings Ltd [AA 104/06, 3 /4/2006, R Arthur]

A security officer found himself psychologically unable to resume work after being kidnapped by an armed robber. The employee suffered severe anxiety and depression, consistent with post traumatic stress disorder. He alleged the employer breached its obligations by not providing him training on how to deal with the aftermath of an armed robbery, nor proper support and counseling, and making inaccurate Police reports about him.

The Authority found that while the employee had not been constructively dismissed, they had an unjustifiable disadvantage grievance. There was a lack of a safe system of work. The employer did not provide two guards to transport cases as normal practice, provided misleading advice about what to do next and terminating the employee's sick leave prematurely. He was awarded $4,000 compensation as well as reimbursement for psychological assessment and doctor fees of $1,020.

A v Attorney-General [WA 196/05; 22/12/2005]

An employee of Child Youth & Family Services ("CYFS") took study leave in which she 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 after consultation. The CYFS learned that the employees illness was work-related in November. The employee took sick leave shortly after, then 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 took a number of steps to assist her. For example, it provided supervision for her workload and provided services to assist her. However, CYFS breached its duties in one respect: it received a medical certificate that she should be removed from "critical frontline work" and should have done so immediately. Instead it took ten days to do this. The Authority awarded the employee $15,000 compensation for hurt and humiliation for this breach.

Kingston v Gen-I Ltd [CA 67/05; 12/05/2005; Y S Oldfield]

Mr Kingston claimed his employer, Gen-I Ltd, breached terms of his employment agreement, namely the obligation to provide for his health and safety. Mr Kingston suffered depression that he claimed was a foreseeable result of workplace stressors. However, the Authority held that Mr Kingston was unable to establish the necessary causative link between his work and the harm he suffered.

Unlike successful claims of stress-related harm, 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. The medical evidence, suggesting Mr Kingston's work was the cause of his illness, was also 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 concluded Gen-i took reasonable steps to remedy the situation after his breakdown. 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"; it employed an additional staff member; and it held discussions with Mr Kingston on possibly moving roles. Gen-i had not breached any duty it owed to Mr Kingston - he was not exposed to any workplace stress that was unreasonable, nor had he raised any particular concerns with Gen-i.

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. Ms Nilson-Reid's 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, so they monitored her.

Ms Nilson-Reid began showing signs of depression that the doctor attributed to stress. 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 here to show constructive dismissal. For an employer to fail in its duty to provide a safe system of work that reasonably avoids harm, it must be shown it 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.

Koia v Attorney-General in respect of the Chief Executive of the Ministry of Justice [AC8A/04; 14/09/2004; Judge Shaw]

In an appeal of an Authority decision, Mr Koia maintained that he had resigned as a result of workplace stress he suffered in his role for the Ministry of Justice, 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 that could be reasonably avoided. Factors considered were the nature of the job being performed and the workplace conditions. The Court found 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 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 temporarily relieve him of direct responsibility.

Mr Koia did not take advantage of the regular visits of workplace support, nor the manager's suggestion to go to a stress management course. Therefore, he lost valuable opportunities to learn to manage his stress. The stress he felt was a significant contributor to his decision to resign was not caused by the employer's breach of duty to provide a safe workplace.

Whelan v A-G in respect of Children & Young Person Service [2004] 2 ERNZ 554

Ms Whelan had worked for the defendant (CYPS) 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. However, the new manager assigned her back on these duties. At the time, the workload of cases of at-risk children was increasing. CYPS had problems providing Ms Whelan with an adequate team. She was required to provide counselling to her own staff, and also to take the burden of their casework until replacements could be found. She requested to transfer out of risk assessment, but this 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; this placed considerable burden on the supervisors, who had to manage that list and ensure that no cases became critical, so 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, CYPS had problems providing this.

Ms Whelan had a major health collapse, which specialists on both sides attributed to her work environment. She took a period of sick leave, during which outside counselling was provided. She then took retirement on medical grounds.

Ms Whelan alleged that as a result of the breaches by CYPS, she 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 CYPS 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

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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