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The impact of common law on workers with stressful jobs

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Abstract: *Critically evaluate, in relation to the common law duty of care, the liability of employers with regard to employees who have suffered illness due to workplace stress. Does the inherently stressful nature of some jobs (e.g. paramedic) make a difference to employer liability for workplace stress.*

Keywords: *Common law, civil litigation*

1. Introduction

Employers have a responsibility to properly care for the health and safety of their employees in the workplace. This obligation includes protecting employees from work-related stress. However, stress means different level to different people and is not always easy to identify. Therefore, it is unreasonable for an employer to take responsibility for the illness caused by the pressure of the employee without being informed. This article will utilize case studies to show that employers should not undertake the primary responsibility of employees who are under pressure. And the appropriate discussion of the relationship between the work of a stressful nature and the responsibility of the employer.

2. Main bold

Before the discussion, readers should first understand how British judges analyze cases through common law. The common law, actually, is a precedent for judges sitting in court. Unlike the statutory provisions of the law codified as a parliamentary bill, the common law is constantly changing. This is because judges adopt their knowledge of legal precedents and common sense to interpret the law, who apply the facts of the cases they hear to previous decisions (Courtroom advice, 2018).

The work risks faced by employees at work are far greater than the work-related injuries. Wei (2007) proved that the total workday loss due to work-related illnesses (28 million) in 2004/05 was approximately four times the total workday loss due to work-related losses (7 million). Especially, the National Bureau of Statistics (2013; in Mustafa,2015) reported: “Mental health problems such as stress, depression and anxiety led to a loss of 15.2 million days in a large number of working days in 2013”. This accounts for 8% of the reasons for the absence of disease in the UK. In this backdrop, work stress and potential liability are themes that all employers should be aware of.

Lockwood et al. (2017) stated that British law, traditionally, has been reluctant to let employers take responsibility for negligence associated with work stress. This reluctance is attributed to the difficulty of identifying employees' psychological harm and concerns about broad liability for employers.

To further understand, in the following three cases, the employer should assume the responsibility of the employee for illness due to work stress:

(1) In Sutherland v Hatton (2002), Hatton is a teacher who suffers from depression due to overwork and has filed a lawsuit with the court to hold the school responsible. However, the House of Lords withdrew the damages originally filed in the High Court and pointed out that in order for the claim to be successful, the employer must first reasonably foresee that the employee will suffer from mental illness due to work stress. This is because teaching cannot be considered as an essential stress, and the school that gave Hatton’s work has done all the work that they can reasonably expect. Another reason is that the increased workload of the school did not cause other employees to suffer health problems and the fact that she did not complain. Therefore, the employer is not obliged to take measures to prevent his mental illness. Lockwood et al. (2017) indicated that Failure to inform other people about the health problems

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caused by the workload will result in damage to any claim.

(2) A similar case is the Barber v Somerset County Council (2004), where Barber's teacher at a school increased his workload due to school restructuring and suffered from anxiety. Eventually Barder demanded compensation for his mental breakdown, but the House of Lords overturned the decision. Because Barber is not the only teacher with an increased workload, and his health is unpredictable and he has not told his employer about his depressive symptoms. It was held that the school did not breach its duty of care. Simultaneously, Prasad et al. (2008) deem that employees to file pressure-related claims, they must prove that the employer has violated its duty of care and can reasonably foresee that an injury would result from that breach, and that the loss has occurred.

(3) However, the opposite case is the Walker v Northumberland County Council (1995), a social worker who has been under tremendous work pressure due to the increased workload and reached the level of mental breakdown twice. Llewellyn (1998) commented that the failure of the employer to provide the assistance promised by the employee is a clear violation of the care responsibilities. Therefore, the court found that the employer was found to have violated its common law duty of care without providing a safe working environment for Walker. It is considered reasonable that the employer provides effective support to alleviate his mental illness and he should have been provided with acceptable assistance with his workload following his return to work after the first breakdown, while this did not happen.

Generally, through the above three cases, it can be concluded that when the House of Lords examines occupational stress, it usually takes out of whether the employer has noticed whether the claimant's health status and the plaintiff's illness are caused by work stress. In occupational stress cases, the courts of first instance in England and Scotland emphasized that, in order to be successful, applicants must be able to confirm whether the employer's knowledge can be reasonably foreseen(Lockwood et al. , 2017).

Last but not least, it should be noted that Work with a stressful nature, such as a caregiver, employers' responsibilities to employees are the same as normal work. Because, Mustafa (2015) demonstrated that regardless of the type of occupation, none can be regarded as fundamentally dangerous to mental health.

3. Conclusion

This article explores whether employers should assume responsibility for employees suffering from stress due to their ability to anticipate and guard against employee stress. Through the three cases in this article, we can analyze that if an employer cannot reasonably foresee an employee which may be mentally crippled due to stress, whom was not under a duty of care to provide a safe system of work. Moreover, work with a stressful nature and ordinary work shoulder the same responsibility for the employer.

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