Stress at work – the risk to practice owners

It is a good idea to have an anti-stress policy explaining your attitude to stress in the workplace, Sarah Buxton advises

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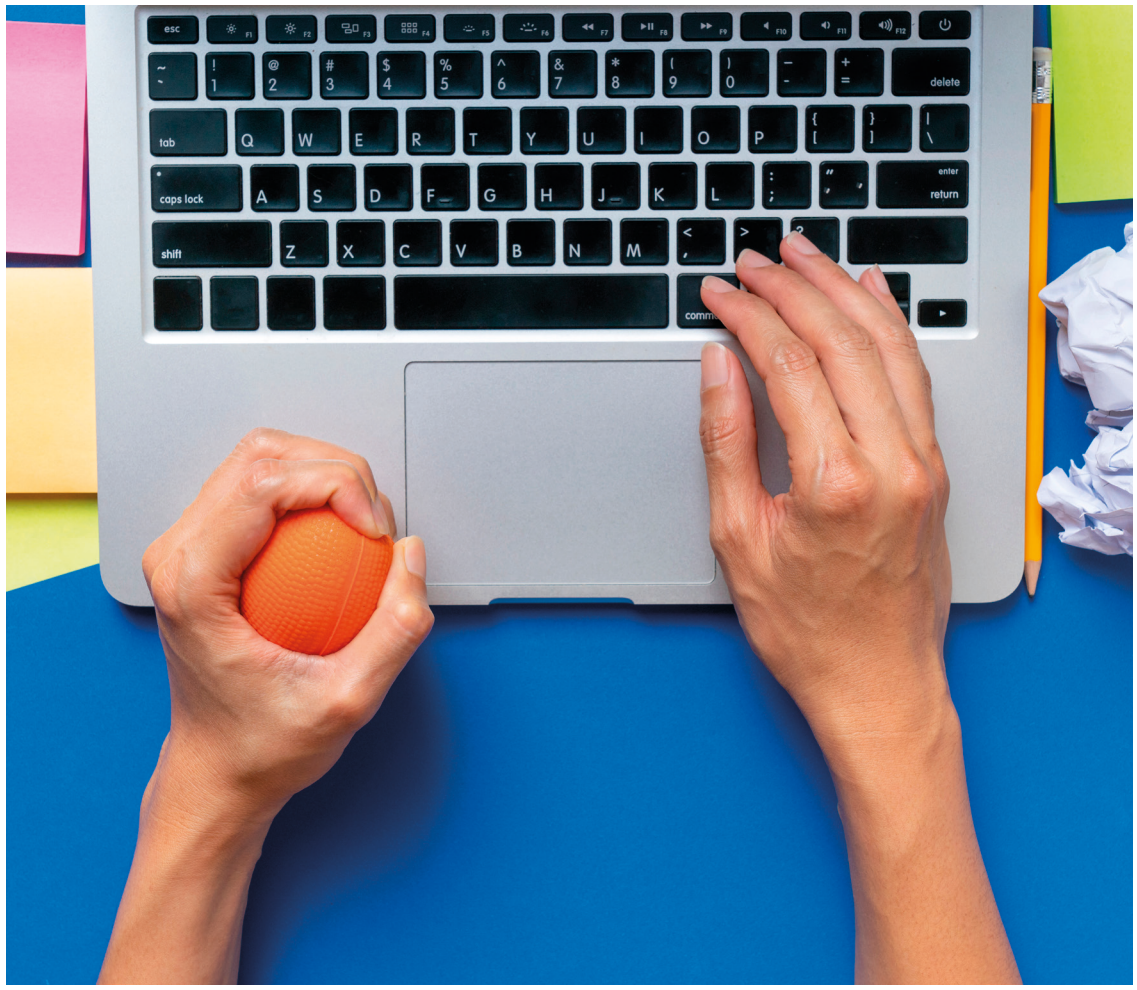

Research shows that employee stress levels are rising in line with the demands of the 21st century workplace. A survey published by the Chartered Institute of Personnel and Development in 2016 found that stress was one of the most common causes of long-term absence.

In addition to this, nearly a third of organisations reported an increase in stress-related absence from the previous year. It is important to manage any sickness absence consistently and efficiently; however, there is an increased risk when the absence is work related, as there are a number of claims an employee can make against your practice.

The Health and Safety Executive defines stress as 'the adverse reaction people have to excessive pressures or other types of demand placed on them'; therefore, it is a reaction that will not normally amount to an illness in itself, although it may result in or be a trigger for other illnesses.

It is important to actively promote good mental wellbeing, as well as being effective at supporting people with mental health problems. With this in mind, it is a good idea to have an anti-stress policy explaining your attitude to stress in the workplace, it should also set out what action you are taking to protect the mental wellbeing of your staff and prevent stress and mental health problems at work, and explaining how you will deal with any problems that may arise.

As an employer, you should consider the impact of stress in the workplace, which may include carrying out a stress audit to ascertain an employee's concerns in respect of stress, and using return-to-work interviews to establish whether an employee's sickness absence could be work-related.

It is important to identify that an employee may be feeling stressed at an early stage and, therefore, you may want to consider training your staff on identifying the signs of stress and dealing with stress. Although this may not be suitable for all of your employees, you should at least give this training to your practice manager or any other senior staff.

If you can identify the signs of stress at an early stage, then this will give you the best chance at maintaining a good relationship with the employee and will allow you to work with the employee to help relieve their stress.

It has been suggested the main factors that can contribute to an employees' stress are workload, work variety, work relationships, involvement, culture of disclosure, communication and bullying; all of which you, as an employer, can control in your practice, providing you have identified the stress at an early stage and have the correct support system in place.

There are various claims that an employee can make when they are complaining of work-related stress, including personal injury, breach of contract, unfair or constructive dismissal, disability discrimination or harassment. I will outline how an employee can bring each of these claims and what you should look for to minimise the risk of each type of claim.

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Personal injury

Employers are under a common law duty to take reasonable care for the health and safety of employees in the workplace, this duty arises under the tort of negligence. To be successful in this type of claim, an employee will have to show their employer has breached the duty of care owed to them, this has caused them injury and an injury of that type, as a result of the breach, was reasonably foreseeable.

In this context, the employee may argue that you have subjected them to an excessive workload, or they have become ill as a result of workplace bullying; therefore, you must show you have taken steps to support the employee and have not breached the duty of care. If you were able to show you have not breached the duty, then you will not be liable to the employee.

Breach of contract

It is an implied term of every employment contract that you will take reasonable steps to ensure the safety of your employees at work. This includes a duty to take reasonable care not to cause psychiatric harm to an employee by reason of the working environment, or the character or volume of work imposed on them.

This is why training staff to identify symptoms of staff is important, as they may be able to pick this up at an early stage and, therefore, as an employer, you can argue you have taken all reasonable steps to ensure the safety of your employees.

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Constructive dismissal

Section 95(1)(c) of the Employment Rights Act 1996 states that to bring a claim of constructive unfair dismissal, the employee must terminate their employment contract (with or without notice) in circumstances in which they are entitled to terminate it without notice by reason of the employer's conduct.

If you fail to support your employee through a period of sickness and they feel they cannot return to work and have no option but to resign, then this is when they may try and make a claim of constructive dismissal. In some cases, work-related stress can cause psychiatric illness that may amount to a disability, and you may be required to make reasonable adjustments in a case like this. If you fail to do so, the employee may feel obliged to resign and this may also amount to constructive dismissal.

Unfair dismissal

Under section 94 Employment Rights Act 1996, employees have the right not to be unfairly dismissed, subject to the completion of the necessary qualifying period of service.

If you are considering dismissing an employee who is absent from work due to work-related stress, then you must seek legal advice from an employment specialist before doing so, because the employee may claim they have been unfairly dismissed.

If the employee can no longer perform the duties under their employment contract, then certainly you may need to consider termination; however, this is a long process and you must have exhausted all other options before terminating a contract – this may include altering their working arrangements or offering alternative employment.

Where the future performance of the contract is impossible due to the employee's stress-related illness, the contract may be considered to have been frustrated; therefore, rather than the employee being dismissed, the contract will end by operation of law.

Disability discrimination

As explained previously, stress is not an illness and just because an employee has been absent from work and provided you with a medical certificate that states they have work-related stress, this does not automatically mean it is a condition that amounts to a disability.

However, there is always a risk and it is important to take the necessary steps to establish whether any adjustments need to be made. The definition of disability under the Equality Act 2010 has four elements; the person must have a physical or mental impairment, the impairment must have adverse effects that are substantial, the substantial effects must be long term, and the long-term substantial effect must have an adverse effect on normal day-to-day activities.

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It is advisable to seek a report from your employee's general practitioner (GP) or from occupational health to establish whether their condition may constitute a disability. Under the Access to Medical Records Act 1998, you can seek the employees' consent to apply to their GP or consultant for a report on their current state of health and the effect this has on their ability to undertake their role of employment.

Providing the employee consents to obtaining a report from their GP, this will allow you to consider any reasonable adjustments that need to be made. Although the employee has the right not to consent to this, as an employer you cannot be expected to make adjustments without a medical report and it is in the interest of the employee to provide their consent.

In deciding whether to seek medical records from the employees GP, or going straight to occupational health, you must consider all of the circumstances. Obtaining medical records from a GP is helpful to understand whether there is a medical condition affecting the employee, whereas the occupational health referral will indicate what adjustments need to be made, if there are any.

Many employers prefer to go straight to occupational health as information from an independent specialist who has not previously been responsible for the employee may be seen as more independent than information from the employee's GP.

Harassment

An employee suffering from work-related stress may consider whether they can bring a claim under the Protection from Harassment Act 1997, which prohibits anyone from pursuing 'a course of conduct which amounts to harassment' – and which that person knows or ought to know amounts to harassment. There is considerable scope for employees to make claims against their employer in respect of the conduct of their managers and colleagues.

An instance where an employee may claim they are being harassed would be when an employer does not strike the correct balance between keeping in touch with an employee and respecting their fit note.

You may think the general rule when an employee has a fit note that states stress at work is to leave them alone until their return to work; however, you may need to keep in contact to maintain a good relationship with them.

How much or how little contact should be determined by looking at the circumstances of that particular employee, but you should not push an employee to keep in contact with you while they are on sickness leave, as this may lead to harassment.

Any of the above claims would have a detrimental impact on your practice and that is why you must ensure you seek legal advice from an employment specialist before taking any action with an employee who is absent from work due to sickness, or has provided you with a fit note stating they have work-related stress.

This is a very complex area of employment law; however, FTA Law can advise you on all aspects of being a practice owner, including guiding you through the sickness absence process. D