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## OCCUPATIONAL STRESS: CLEANING UP THE LEGAL MESS

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## Introduction

- The legal basis on which stress-related injuries are handled
- The case-law as it has developed
- The current position
- The need for clarity

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## Stress, Negligence & the Law

- Negligence – the snail in the bottle
- Application of old principles in new ways
- Physical injury / psychiatric injury
- Is there a duty?
- Has the duty been breached?
- Has that caused an injury?
- Was the injury foreseeable?
- 5 main hurdles

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## Walker and Others ...

- Walker v Northumberland  
Social worker  
Nervous breakdowns  
Foreseeability
- Hatton v Sutherland  
Detailed guidelines  
Cases unique  
Foreseeability in 2 main circumstances  
EAP

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## STRESS: BEATING CLAIMS

- Duty
- Breach
- Cause
- Injury
- Foreseeability

Policy

Training

Job analyses

Review Meetings

EAP

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## STRESS: BEATING CLAIMS

- Duty
- Breach
- Cause
- Injury
- Foreseeability

Overwork

Bullying

Discipline

H&S issues

Targets / Deadlines

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## STRESS: BEATING CLAIMS



- Duty
- Breach
- Cause
- Injury
- Foreseeability


Medical Assessment  
↓  
Biofeedback Therapy  
↓  
Cause  
↓  
Solution

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## THE BERBER CASE - 1




- *Berber v Dunnes Stores*, Supreme Court, 12/02/2009
- Plaintiff was a buyer with Dunnes Stores
- He suffered from Crohn's disease but had a good attendance record
- He was transferred to a store in line with his contract
- He was unhappy and a series of disputes arose
- He went out sick for some time as his Crohn's disease was exacerbated by the stress

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## THE BERBER CASE - 2




- He eventually resigned and sued for constructive dismissal (breach of contract – trust & confidence) and personal injury
- The High Court found in his favour
- The Supreme Court overturned that decision, finding that Dunnes had acted reasonably at all times and that the injury was not foreseeable
- This is a timely check on stress claims which were beginning to run out of control

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## THE BERBER CASE - 3




- Points made by the Supreme Court
- Employees are impliedly contractually obliged to obey the lawful and reasonable orders of their employers
- A refusal to do so justifies summary dismissal
- *Hatton v Sutherland* approved
- Stress does not lead to liability: it can lead to injury which in turn leads to liability
- The key question is whether the injury was reasonably foreseeable
- Any injury must be attributable to work

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## THE BERBER CASE - 4




- Foreseeability depends upon what the employer knows (or ought reasonably to know) about the individual employee
- The employer is entitled to take what he is told by his employee (including the employee's doctor) at face value unless there is good reason to think to the contrary
- The indications of impending harm to health arising from stress at work must be plain enough for any reasonable employer to realise that he should do something about it

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## THE BERBER CASE - 5



- Dunnes responded reasonably to each incident as it arose and the alternative was to abdicate from all control of the manner in which the respondent would carry out the duties of his employment

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## Latest Developments



- So much for *Berber v Dunnes Stores* ...
- *Kelly v Bons Secours Health System Limited*, [2012] IEHC 21
- High Court Horror Story
- *Browne v Minister for Justice*, [2012] IEHC 526
- Garda bullying case

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## Moving Forward



- A need for legislation?
- Difficult to clearly define when liability should and should not attach ... but ...
- Could confirm that stress itself is not an injury
- Could confirm when liability will and will not arise
- Most importantly – could define a process

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## A Suggestion



- Injuries Board format cannot work on its own

1. Employee presents complaint to Rights Commissioner
2. Independent Medical assessment
3. Rights Commissioner to hear both sides and doctor and make recommendations
4. If employer fails to implement recommendations and injury occurs, liability ensues

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## Benefits



- Provides employers with greater certainty and clarity
- Leaves doctors in the appropriate medical space rather than dragging them into IR space
- Gives employees a mechanism for having concerns addressed
- Provides an alternative to the all or nothing option of litigation
- May save on insurance premia – could be funded by insurers?
- Likely to eliminate the use of “stress” as a means of extracting exit packages

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