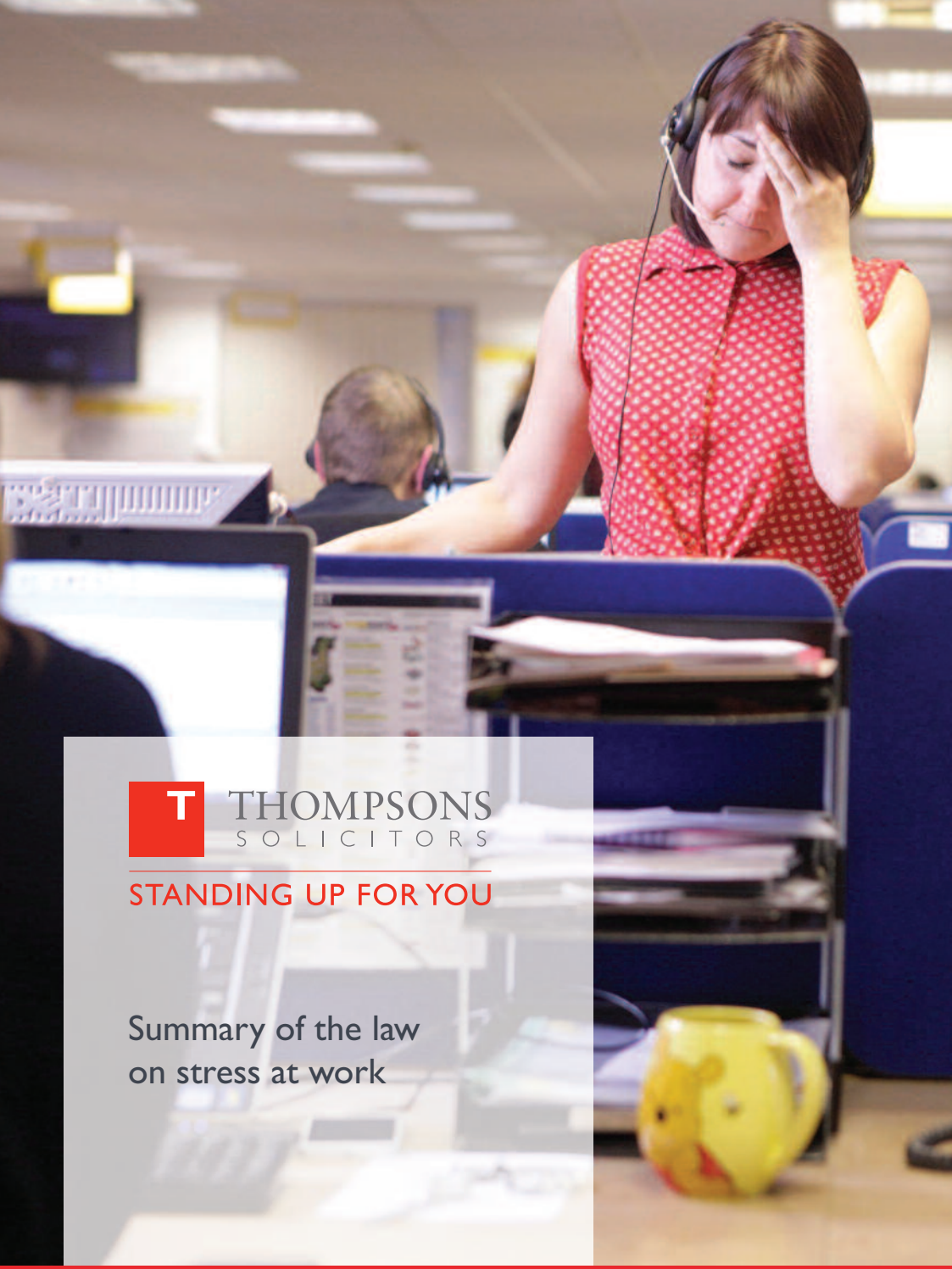

THOMPSONS
SOLICITORS

STANDING UP FOR YOU

Summary of the law on stress at work

Our pledge to you

Thompsons Solicitors has been standing up for the injured and mistreated since Harry Thompson founded the firm in 1921. We have fought for millions of people, won countless landmark cases and secured key legal reforms.

We have more experience of winning personal injury and employment claims than any other firm – and we use that experience solely for the injured and mistreated.

Thompsons will stand up for you by:

Staying true to our principles – regardless of how difficult our job is made by government, employers or the insurance industry

Remaining committed to the trade union movement, working closely with them and with professional associations for the benefit of working people everywhere

Thompsons pledge that we will:

Work solely for the injured or mistreated

Refuse to represent insurance companies and employers

Invest our specialist expertise in each and every case

Fight for the maximum compensation in the shortest possible time

Standing up for you

Contents

The Spirit of Brotherhood
by Bernard Meadows

About this booklet

Stress means different things to different people, but in general terms it's a reaction to excessive pressure or harassment. This booklet is solely concerned with stress in the workplace.

- Proving a stress case
- Was it foreseeable?
- What does the law say?

What do workers have to prove?

In a stress case, workers first have to prove that they have a psychiatric illness ("the injury"). Then they have to show:

- That their employer breached their duty of care.
- That their working environment posed a real risk of causing the illness and the employer knew (or ought to have known) that their employee was exposed to that risk.

Workers then have to prove that their employer knew that the difficulties they faced were so severe as to create a risk of an imminent psychiatric illness. In order to prove this "foreseeability", claimants often have to produce a report from a doctor or prove that they have been off work before due to a similar illness.

- That their employer failed in their duty of care towards them. This involves showing that the employer did not do everything that was reasonable in the circumstances to keep the worker safe from harm. This includes the court looking at how the employer dealt with any risks.
- That the harm they suffered was caused by their working environment and their employer's breach of the duty of care owed to them.

Was it foreseeable?

Proving that the psychiatric injury was foreseeable by the employer is a crucial part of any stress at work claim, but it is very difficult to do so.

The courts have said that foreseeability depends on what the employer knew, or ought to have known, about the pressures on the individual employee at the time.

That doesn't mean employers have to ask about a worker's state of health all the time, but if there are obvious things happening (for instance, the person keeps bursting into tears), then the House of Lords has said that they would expect a reasonable employer to realise that there might be a problem.

The 1995 landmark case of Walker v Northumberland County Council, in which Mr Walker had two nervous breakdowns is a good example. As the employer had been deemed to have been "put on notice" after the first breakdown, Mr Walker's second breakdown was therefore entirely foreseeable as they did not provide the extra help they promised him.

Once an employer becomes aware that a worker seems to be having difficulties, they must investigate the problem and find out what they can do to resolve it. This will depend, to some extent, on the size of the employer and the resources available to them.

In particular, the courts have said that an employer who offers a confidential counselling advice service is unlikely to be in breach of their duty. That does not mean, however, they are a "panacea" in all cases and just having a counselling service is not enough to correct an employer's breach of duty of care.

In other words, employers must do more than just suggest that an employee makes use of the company counselling service or refer them to occupational health if they complain of stress.

However, since the aforementioned Walker case, the courts have made clear in a number of notable cases – such as Hatton v Sutherland and Barber v Somerset County Council – the extent of the onus on claimants to prove their claim.

Who was to blame?

Workers also have to show that it was more likely than not that their employer was to blame as a result of a breach of their duty. This is called the "balance of probabilities".

Claimants can prove that their employer was at fault either by showing that they breached a common law duty (law made by judges) or a statutory duty (an actual law).

What does the law say?

Common law says that employers are responsible for the general safety of their employees while they are at work. In addition, employers have to comply with a number of statutes, such as:

- The Health and Safety at Work Act 1974, states that employers have a duty to ensure that, as far as is reasonably practicable, their workplaces are safe and healthy. They also have to take measures to control any risks that they identify.
- The Management of Health and Safety at Work Regulations 1999, state that employers must carry out a workplace risk assessment to identify any potential risks. Any measures they take to control the risks must be based on this assessment.

Employees may also be able to rely on the following statutes if they want to bring a claim of stress at work, depending on the circumstances:

- Under the disability discrimination provisions of the Equality Act 2010, stress may turn out to be the sign of an underlying condition that would amount to a disability. Under the Act, employers are required to make reasonable adjustments to the workplace, such as reducing an employee's workload or pressures on an employee who is under stress.
- According to the sex discrimination provisions of the Equality Act 2010, if someone is being treated unfairly by, say, a line manager who treats female staff in an overbearing and dominating way, they may be able to argue that such behaviour amounts to sex discrimination.

What about the Protection from Harassment Act?

Although there have been a number of decisions in favour of claimants, in most cases, it is difficult to prove that an employer was liable under the Protection from Harassment Act 1997. To fall within it, the conduct complained about must:

- Have occurred on more than one occasion.
- Be targeted at the claimant and be intended to cause distress.
- Be serious enough to amount to a criminal act.
- Not simply amount to a disagreement between two work colleagues.
- Have a close connection between the conduct and the job of work.
- Not be considered to be a reasonable and proper criticism of poor performance.

0808 100 8050

For more information visit:

www.thompsonstradeunionlaw.co.uk

@thompsonslaw

Published January 2014

TH13-362

Standing up for you