

## IS THERE A DUTY OF CARE FOR EXCESSIVE WORKLOAD AND BULLYING?

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The advertising industry is well known for being one where pressure and stress are par for the course. Dealing with deadlines and high client expectations within a competitive and ever-changing environment can be exciting for some, but for others, overwork and overwhelm results. It is not uncommon for us to hear of instances where agency staff have been left in tears because of unreasonable demands or difficult situations.

In this environment, it's important that employers are aware that there is a duty to take reasonable care to protect vulnerable employees. While there is no obligation to ensure a happy workplace, a duty does arise where a person exhibits a vulnerability to psychiatric injury.

While the High Court has previously found that it is too large a step to say that all employees are at risk of psychiatric injury from stress at work, if there is something more – like the nature and extent of the work or signals from the employee like frequent absenteeism or visible changes in behavior – this could make the risk foreseeable.

A fairly recent decision from the Queensland Court of Appeal awarded more than \$435,000 to an employee who suffered major depression, anxiety and posttraumatic stress as a result of being overworked and subject to harassment by her manager.

In that case, the employee was an administrative assistant at a nursing home. Two years into her employment, a new manager was appointed and within around 10 to 11 months of working under this manager, the employee's mental state had deteriorated to the point where she was no longer able to work.

Evidence was given that the manager took an authoritarian approach that was unreasonable, aggressive, and rude – including dishing out insults to the employee such as "I've never met anybody so stupid as you". In addition, when the employee complained to the manager about being significantly overworked, she was simply told to "get over it". As a result of this and other similar conduct – and in combination with being so overworked – the employee's mental state visibly deteriorated from being "bright and bubbly" to noticeably withdrawn and preoccupied. She also developed a nervous tremor and often cried at work and this was admitted by the manager.

The reason this employee was able to succeed in her claim is that she overcame the hurdle of proving that her psychiatric illness was reasonably foreseeable to her employer. It was the visible deterioration in her psychological state under the new manager that made the risk of psychiatric injury foreseeable. The Court found that the manager ought to have foreseen that there was a particular vulnerability that the employee was at risk of developing a psychiatric illness and that the employer should have exercised reasonable care to avoid or minimise her stressful experiences in the workplace.

The Court found that the employer's failure to exercise reasonable care to avoid or minimize risk of psychiatric injury – such as by ensuring that the manager did not behave in a harassing or belittling way – amounted to negligence.

While being overworked does not of itself establish a breach of duty, this case has shown that it is an important factor when other stresses are involved as being overworked was found to have been a factor that exacerbated and compounded the employee's condition. The high work demands were found to make it more difficult for the employee to cope with the manager's behavior, as did the refusal of the manager to have her workload reduced.

**What does this mean for you?**

In the agency environment where stresses abound, it's important for employers to be aware of any high-risk employees who may be exhibiting signs of distress caused by their workload or by dealings with other co-workers or clients. Any requests for assistance or reports of stress must also be taken seriously by management.

**Contact us**

Anisimoff Legal has recently expanded its core expertise to now include advice on employment matters. If you would like further information on this case or other employer obligations please feel free to get in touch.

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