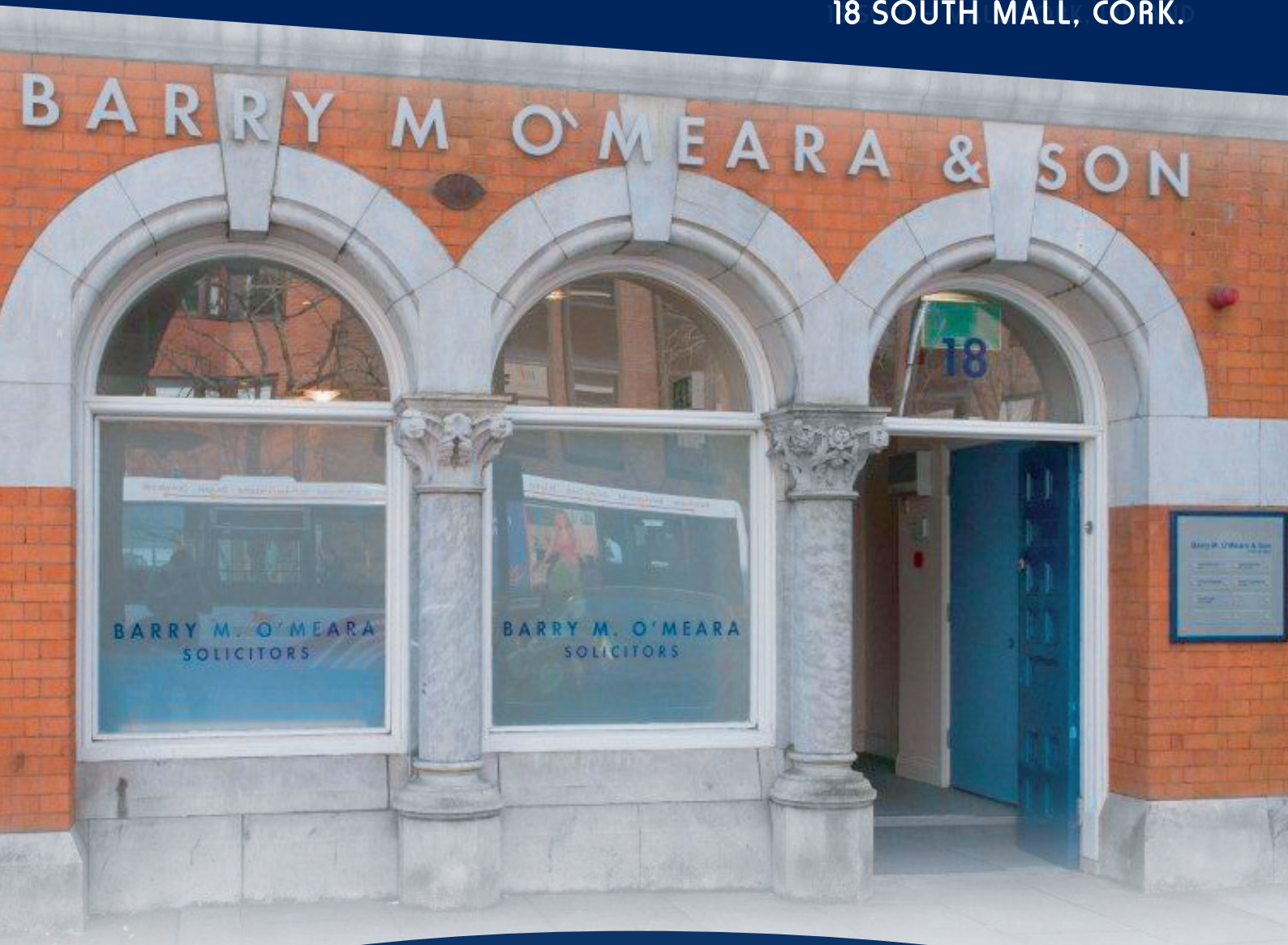


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## EMPLOYMENT LAW UPDATE: WORKPLACE STRESS

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## Stressed About Stress?

This week the Health & Safety Authority (HSA) published an Information Sheet for Employees and also a Guide for Employers in relation to work related stress.

The purpose of the Information Sheet and Guide is to focus on ways to reduce the likelihood of work related stress and its effects, as well as ways to prevent short term stress becoming a long term problem. The Guide and Information Sheet are intended to work in tandem with the “Work Positive” Risk Assessment Tool, previously released by the HSA, which aims to assist workplaces in identifying potential risks and putting in place control measures to address hazards which can lead to work place stress.

### **There are four main challenges in dealing with workplace stress, namely:**

1. The Health and Safety Implications such as proper risk assessment, monitoring, training and identifying appropriate control measures.
2. The Organisational Effects such as absenteeism, low productivity and morale.
3. The Employment Law implications such as workplace investigations and constructive dismissals.
4. The Limitation of Liability for claims of personal injury arising from workplace stress.

But just how difficult is it for an employee to sue their employer for workplace stress induced injury? In Ireland, it has proven very difficult indeed. However, as the understanding of various factors such as mental illness, dignity at work and the role of the healthy workplace develops, the law in this area is also expanding. Personal injury cases of this kind may be entirely based on stress induced injury, a psychological injury resulting from bullying or harassment or commonly, a combination of stress, bullying and harassment at work leading to an injury.

Whilst there is no simple test to determine whether a prospective employee would be successful in any claim for personal injuries resulting from stress, bullying and harassment in the workplace, recent case law has identified a number of considerations, namely:-

- 1. Has the employee suffered an injury to his or her health as opposed to what may be described as “ordinary” occupational stress?** Where the employee suffers a personal injury at work which is not of a direct physical kind (e.g. a broken leg) it must amount to an identifiable psychiatric injury. “Stress” in and of itself is not sufficient. For legal purposes, stress becomes an injury when the person develops a recognised illness. Illnesses resulting from workplace factors might be an adjustment disorder, an anxiety disorder, depression or post-traumatic stress disorder. Also, not all symptoms are psychological in nature as increasingly medical experts recognise stress as a factor in many physical diseases such as heart disease and hypertension.

**2. Is that injury attributable to the workplace?** An employee must prove that excessively stressful conditions, or bullying and harassment occurred and that there was a causative link between the behaviour and the injury. In other words, the employee has to show that the workplace had extremely stressful conditions or that they were bullied or harassed and this is what caused their injury. An employee might demonstrate this by keeping a diary of the conditions in the workplace which would help establish a link between their injury and the work place.

**3. Was the injury suffered reasonably foreseeable in the circumstances?** Stress, bullying and harassment are uniquely subjective areas. This means that the law does not generally consider an “ordinary” person but the individual employee concerned. An employer is required to consider what was likely to happen given what they knew about the employee concerned, but also what they should have known. Did the employee hand in sick certificates with “stress” as the reason for absence? Was the employer aware that the employee previously suffered from depression? Perhaps, the employee had mentioned they were finding it difficult to cope with their workload?

**4. Did the Employers fall below the standard of a reasonable prudent employer in addressing the needs of that particular employee?** The law considers not only what the Employer could have done but should have done in all circumstances. The size and resources of the employer’s business will be taken into account. For example, was there an attempt to provide flexible or reduced working hours or temporarily reduce the workload?

**There are certain steps an employer can take to safeguard against personal injury claims of this kind, such as;**

(i) Ensuring compliance with all Health & Safety requirements such as risk assessment, control measures (if appropriate) and integrated occupational health and safety statements. It is imperative that regular training is provided not only to employees but supervisors, managers and the employer also;

(ii) Particularly where the resources of an employer allow, employees should have access to an Employee Assistance Programme (EAP). Most major healthcare and health insurance providers offer EAP services. An Employer who offers a confidential advice service with a referral to appropriate counselling or treatment services is less likely to be found in breach of their duty of care to their employees. However, having such a service is not in itself a complete protection against claims;

(iii) Performance management is a fertile breeding ground for claims of stress, bullying and harassment. Fair and regular reviews carried out under a clear documented performance review policy is essential. This also allows for employers to request feedback from their employees as to how they are coping with their job and identifying where shortfalls in performance may be caused by work related stress factors so the employer becomes aware of a problem at an early juncture, when it is easier to resolve the matter and protect against claims.

(iv) Seek early advice from an occupational health specialist or legal adviser if you become aware of a problem. Very often any potential claim, injury or issue can be resolved quite easily, at a fraction of the cost, at the beginning of the problem.

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## Your Contact:

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If you wish to discuss any of the above issues or any other employment law issues that arise, please contact **Emer O'Callaghan** at [emer.ocallaghan@bmomeara.ie](mailto:emer.ocallaghan@bmomeara.ie) or telephone 021-4273305

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### **Emer O'Callaghan BCL MA**

**Emer O'Callaghan** is one of the partners in Barry O'Meara's. Emer concentrates her practice in the area of Employment Law, Occupational Injury, Representing Employers and Employees before all Courts, the Rights Commissioner, Employment Appeals Tribunal and Equality Tribunal.

Emer has a Law Degree from University College Cork and a Master Degree in Health & Safety and Environment Law specialising in the area of non-physical Employment Injuries such as stress, bullying and harassment. Emer is a member of the Institute of Occupational Health & Safety Practitioners and is a regular conference speaker for the CIPD and Skillsnet. She is an examiner for the Law Society of Ireland and a Co-Author of the Oxford University Press Employment Law Manual (3rd edition).

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