



## Stress in the workplace

Jonathan Coates

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The pressures on medical practitioners to manage over-loaded schedules in under-resourced departments are often cited and will be familiar to many. Employers of such practitioners should take particular note of a recent decision of the New Zealand Court of Appeal which articulates the obligations of employers to employees who are exposed to avoidable stress in the workplace. This column considers employers' obligations and the Court's decision in the *Gilbert* case.<sup>1</sup>

Mr Gilbert was a probation officer who was forced to retire from the probation service on medical grounds fourteen years earlier than anticipated. Mr Gilbert suffered from exhaustion, depression and coronary artery disease following his exposure to avoidable stress from work overload, management failure, and office and resource deficiencies. Importantly, Mr Gilbert's employer had failed to take notice of repeated warnings that Mr Gilbert had given to his supervisors of the stress that he was under.

The Court found that Mr Gilbert's employer had breached its obligation to provide a safe workplace. Employers have a statutory obligation under the Health and Safety in Employment Act 1992 to take all practicable steps to ensure the safety of employees while at work. Mr Gilbert's breakdown in health included an acceleration in his coronary disease. The Court found that the employer had a duty to take reasonable steps to exclude the risk of Mr Gilbert's cardiac disease accelerating due to stress. Mr Gilbert was awarded financial compensation for loss of future earnings, mental stress, loss of life expectancy and quality of life.

The Court recognised that there is a duty on employers to maintain the psychological welfare of their employees. The duty is to act reasonably in the circumstances. From the employee's perspective, provided the workplace stress is a recognised clinically significant psychological dysfunction the claim may proceed.

In addition to the attention paid to an employer's failure to respond to warnings of stress, the Courts will also consider the extent to which the employee might have contributed to his or her mental or physical condition. This will include, but will not be limited to, failing to bring the stress to the employer's attention. In the *Gilbert* case, Mr Gilbert had particular risks which would tend to reduce his expectation of future work years. His predisposition to coronary artery disease, his smoking, and the work pressure that came as an unavoidable feature of his employment as a probation officer all had to be taken into account.

So what does the *Gilbert* decision mean for the health sector? *Gilbert* and other recent cases indicate that stress-based claims are on the increase, succeeding, and expensive. Health providers need to take seriously any concerns raised about an employee's workplace stress, and health generally. Employers should, where possible, ensure that they are aware of any particular vulnerabilities of employees. There should be policies and procedures in place to ensure that employees are clear about the processes to follow if they wish to raise concerns about workplace stress. When employees raise concerns, managers should investigate promptly and take remedial action where appropriate. In some cases, particularly where resources are limited or where there are

no suitably qualified practitioners to fill the gaps, the difficulties may not easily be solved. However to turn a blind eye, as was done to Mr Gilbert, will only compound the problem.

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**Reference:**

1. Gilbert v Attorney-General. CA 141/00 (March 15, 2002).