

Legal Aspects of Teaching Stress

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Abstract

This paper aims to highlight the legal remedies available for stressed teachers. To create awareness between the administration and the teachers about the possibility of litigation in the court is discussed in detail. An understanding about the consequences of stress may enable the administration to estimate the foreseeable stress of teaching profession and thus avoid unnecessary cost of litigation in the court. Giving examples of a few successful cases of teachers, who suffered stress, filed lawsuits and received a compensation of lump sum amount as stress damages. The landmark victory cases may help the stress victims to develop the stable and strong footing of their cases. On the other hand the administration can minimize their losses by paying an in time attention to the teachers suffering from occupational stress.

Keywords: Teaching stress, mental anguish, and legal aspects, legal remedies, assessment of award for damages, litigations in the courts.

1. Introduction

Jex, (1998) explained that the terms strain and distress are often used to refer to a wide range of negative outcomes which the employees may experience while facing the psychosocial stressors at work i.e. the excessive job demands or difficult work relationships. Quick, et al., (1997), Lazarus & Folkman, (1984) classified such strains into the following broad categories;

- a) Physical outcomes may result in tensions, headaches and migraines, muscular and joint pains, high or low blood pressures and tremors.
- b) Psychological outcomes may include an inferiority complex, distress, anxiety, depression, lack of concentration and motivation to work, withdrawal and a job burnout.
- c) Behavioral disorders may include a general lack of interest in teaching, absenteeism, verbal abuse, marital conflict, drug addiction etc.

Van Dick & Wagner, (2001) expressed that the employers are bound by a contractual liability of the well being and care of their employees. The contract of employment can be express in contents or may include it as an implied term of binding the employer to be responsible for the health and safety of the employees. An employer is bound both morally and legally to take all possible steps to provide the required facilities to minimize the risk of any type of physical or psychological harm to an employee.

The employees are the real assets of an organization and their mental relaxation, team work with mutual cooperation, trust and respect can lead to a successful achievement in the organizational goals. It is a moral as well as a legal obligation of employers to give consideration to the type of work assigned and the volume and load of work the employees have to perform their role in providing a conducive work environment enabling and allowing the employees to be devoted and committed in performance of their routine duties.

In case of failure to comply with the contractual liability may result in a resignation or a forceful retirement of an employee saving the entitlements of a subsequent claim of damages in the court or filing a lawsuit seeking redress in the employment tribunal for his/her constructive dismissal from the job. The employers can defend their position by showing and proving that they have taken all the practicable steps and measures to provide a suitable environment for the employees.

The gist of action in such cases lies on the point that there was every possibility of the happening of situations which the employers could reasonably foresee and therefore could take measures in anticipation to protect their

employees suffering from a mental anguish. The approach taken by the courts is bold and robust and clarifies the fact up to what extent the employers are accountable for the mental anguish and well being of their employees. NUT (2000) reported that the teaching stress was no doubt a matter of serious concern. It was proved by the teacher's help line keeping a confidential telephone records. The number of calls by the stressed teachers exceeded 200,000 in two months until 2001. Stress had become a commonplace during the twenty first century in professional life and certain professions were hit hard during this stressful era.

2. Problem Statement

This study is based to find out the fact that does the law provides protection to the teaching community working under constant stress and pressure. What is the appropriate procedure to seek the legal redress? How to make a successful claim for getting the damages for mental anguish?

3. Objectives of the Study

The study aims to achieve the following main objectives

1. To highlight the problem of ever increasing occupational stress in teaching profession.
2. To create a greater understanding and awareness that prevalence of such stress is damaging and harmful both for the teachers and the administration.
3. To inform the stress sufferers about the possibility of seeking the legal options to help them.
4. To suggest the ways to follow a successful litigation procedure to claim damages of their mental anguish
5. To make the administration more responsible and increasingly accountable for the physical well being and mental peace and tranquility of the teaching community.

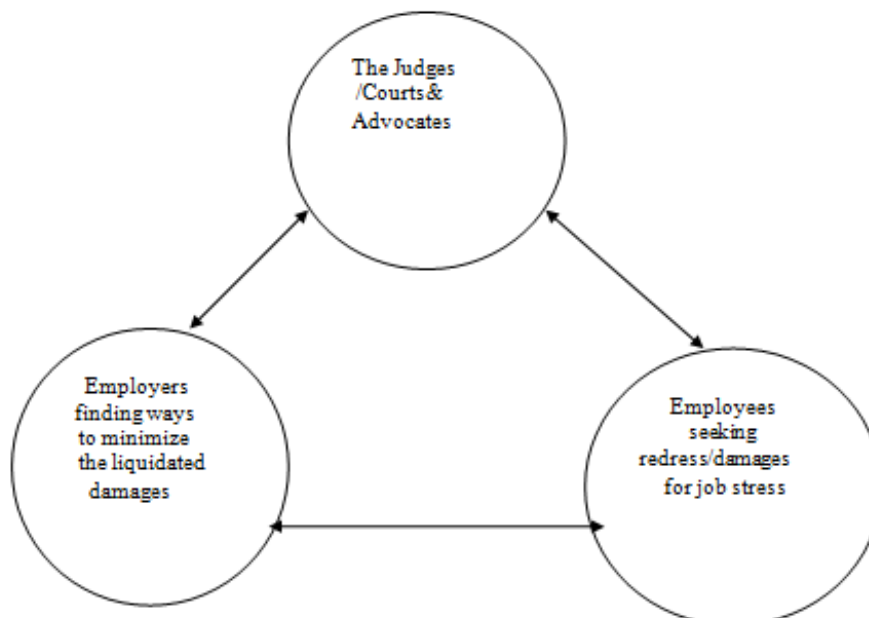
4. Hypotheses of the Study

The study is based on the following hypotheses.

Ho: There is no legal redress available for the stressed teachers.

H1. The legal redress is available for the stressed teachers.

5. The Stakeholders involved in claiming and deciding the damages for job stress



The different stakeholders have their own interests.

1. The courts have to decide the cases of stress victims and provide an appropriate redress. It is the kind of documentary proof which validates a successful claim of stress damages. The judges have to reach at the decision on the basis of some solid points in favor and against the litigating parties' i.e. the employees vs.

- employers, the teachers vs. the administration.
2. The employees have to prove that their occupational stress could be foreseeable by the employers and they were unable to give an in time due attention to their problems. Their condition was aggravated due to mere negligence of their employers.
 3. The employers can take the defense on the ground that either the employee was unable to complain and report properly the case or they have already provided adequate facilities and took a good care of employee concerned.

Both the parties file and pursue their cases through their counselors. More and more employees are seeking a court remedy to claim the liquidated damages against their employers whose negligence caused illness resulting from prolonged, uncured stress. Professionals including the teachers had been successful in winning their cases and receiving a remarkable amount of compensation for working under constant stress and pressures. An increasing number of cases are already in the pipeline and pending to be decided. It is true that seeking a remedy through a court action can be a constant alarm and pressure on the employers to deal seriously with the stress problem. But seeking a legal remedy through the court is by itself a stress provoking issue.

Annette Wilson, (2004) an expert and solicitor in personal injury cases looked at the new developments which took place in the law related to workplace stress claims expressed that the option of choosing the legal route was tough and its implicit cost was too much for an already nervous and tensed teacher. Such claims were already difficult to be assessed and few succeeded since the courts had tightened up the circumstances in which stress claims would be contemplated.

Absence of a specific law which governed employees stress was an added difficulty. The Health and Safety Act, H&SA (1992) at work bounded the companies up to the duty of care and to ensure worker's illness caused due to working environment. The Health and Safety Executive (HSE) extended it to cover the ailments resulting from prolonged stress at work. But the employees were not entitled to use such legislation at their choice. Only HSE could take action against companies where distress was prevailing.

The stress suits filed till date were under the civil law and the focal point was the negligent role played by the employer who remained inactive over the employee's complaints and thus sued for damages through the county or high courts. Few stress cases were settled in the court while others reached an out of court settlement and included the cases against the private and public sector employers. The cases decided by the court provided legal precedents and helped in deciding subsequent claims. The courts took in to account the three major principles while deciding a stress victim case. For a perfect winning case existence or bearing of work related stress was not a sufficient reason it rather required certain valid proofs for winning a land mark victory case.

1. An employee had to prove his/her suffering of physical or mental health damage. Certain minimum level of stress was considered to be just normal and stress lawyers mentioned it was not a solid ground for compensation. Showing and proving an injury increased the chances of entitlements to claim compensation. In many successful cases the claimants had suffered at least one nervous breakdown.
2. Successful claimants proved their health was damaged by work and not due to any other factor. The employers tried to prove that work was not to be blamed and that the employee was already having a hereditary stress history or was under stress because of a personal problem, i.e. a family clash or breakdown etc. Absence or denial of appropriate training or support program to face work pressures was an additional point in support of a successful claim.
3. The employers could better foresee and anticipate the stress injury due to pressures at work. A worker who had already suffered a nervous breakdown and faced a similar pressurizing situation after he/she returned back to assume the duty entitled him a successful claim against the employers.
4. The problem had been flagged up by a court ruling in 2000 which clarified the fact that that any employee experiencing excessive stress should intimate preferably in writing to make their bosses alert about their situation. This might provide their employers a better chance to tackle it properly in an amicable way before going to face a lawsuit and tedious court trial. By offering a confidential counseling and providing a suitable plan of treatment for stress could eliminate the chance of failure against stress cure.

Stress cases might involve, time, cost and stamina. Unfortunately no legal aid is provided for mental injuries inflicted and majority of such cases was initiated by the unions representing their interests and a few of cases were advocated using the win-pay agreement. In such a case the advocate could receive a fee after the plaintiff received a payment of damages. Mostly the advocates don't take the risk of pursuing such cases.

6. Literature Review

Vežina et al, (2004) explained that work place stress was associated with a large number of physical and mental sicknesses among the workers of different categories including the teachers.

Cotton & Hart, (2003) concluded that stress was linked to job dissatisfaction, decrease in productivity and a high

risk of occupational injuries. Clarke & Cooper (2004) also supported the findings in their study conducted about stress.

Leka & Cox, (2003) maintained that distress of employees had a negative impact on the organizational success, its winning edge against the highly competitive markets of today.

According to statistics Canada (2003) one third (30.8%) of total number of employees complained that the work stress was getting extremely high and the workdays were turning to be the bad days for them. Sroujian, (2003) conducted a study and the major finding was that most of the short leaves and long absence were due to medical problems related to mental disturbance which also represented 30% of claims for compensation which amounted to 70% of the total cost. Such a high scale of the problem and the costs involved were related to stress at the workplace, most of the organizations would prefer to introduce certain effective training programs to enable the employees well prepare face any possible stressful situation. It is also advisable to minimize and control the major stressors at the work place.

Archambault & Gingras, (2003) opined that a large volume of research publications from 1991 to 2002 intensified the stress issue in today's working environment. Kristensen, (2005) also supported their findings. Cooper, D. & O'Driscoll, (2001) suggested to seek effective remedial measures to win the stress war. Cox et al. (2007) emphasized the need to broaden and intensify the research on occupational stress. By introducing effective stress intervention programs and measures it could be possible to find some amicable solution.

S.E. Smith (2012) wrote that the mental anguish was the psychological distress resulting from some traumatic events. The legal protection could be availed in cases where people might get award of compensation as damages for experiencing mental anguish. For this they needed to prove that their aggravated condition of mental injury was a result of a constant pressure created by the wrongdoer. The spouse or the close family member of a murder victim were entitled to pursue the murder of their family member as a criminal case and also sue the murderer for financial suffering, the miseries and mental anguish of deprivation of a precious family member in a civil case

Stress could result in a number of psychological problems including, tension, anxiety and depression, a general lack of interest, confidence and concentration. To be considered as a case of mental anguish for legal proceeding, relevant documentary proof was required to emphasize that the stress victim experienced serious and intense psychological pressures. It must be proved that their aggravated condition was linked to the actions and wrongdoing of their employer. A person already suffering depression due to certain other reasons either hereditary or a prolonged personal health problem before entering the job could not pursue a successful claim of mental anguish. Cosgrave (2000) mentioned that stress had become a common problem of the twenty first century workplace and no doubt certain professions were hit hard. Teaching was also one of the severely affected professions where sick leave due to stress related illness, insurance claims, early retirements and job burnout rate was alarming. The research developed a linkage between supervisory staff behavior and workers psychological wellbeing. For example, in a quasi experimental study, Wager, F, & Hussey (2003) investigated the associations between employees' perceptions of their supervisors' interaction styles and increases in blood pressure.

Sutherland & Cooper (2002) stated that ideally an organization devised the improved supervisory behavior strategies by introducing;

1. Timely feedback by appreciating dutiful employees.
2. Developing an environment of trust and respect.
3. Consistent and impartial dealing with the staff.
4. adopting a flexible approach by taking care of employee's individual needs

Teachers' stress had also been recognized in the courts. NASUWT general secretary Nigel de Gruchy remarked that if work-related stress was not taken more seriously by Government and employers it could become the education cancer and a true no one killer of the 21st century. C. M. Hargate & A D. Ogilive (2003) found that teaching stress might cause a severe mental break down. Teachers in the past have won law suits for suffering professional distress and reaching at the peak of mental anguish. Following are a few of such lawsuits which are sufficient to divert the attention of the authorities towards the seriousness of the problem. The work place stress is a real hazard and threat to health and well being of employees and requires a due attention. Introduction of suitable coping strategies and curing the stress problem at its root cause level could help to win the stress battle and safeguard the employers against the risk of possible litigation. The following were the land mark cases of teaching stress.

7. A Summary of Landmark Cases of Teaching Stress

1. In July 1998 Anthony R. the deputy head teacher case was decided in a settlement from Pembroke shire county council with a compensation of £100,000. His case was supported on the points of allegations of humiliation, exclusion, embarrassment and discontinuation of his teaching career due to the negative dealing and

treatment of the school head Mr. Joan Morris.

2. In 1999 Muriel Benson won her case and received a compensation of £47,000 in compensation for stress. She was teaching at a secondary school and her case was an exemplary victory against the Wirral local education authorities who neglected her genuine problems. The amounts of damages were decided in a settlement between the parties outside the court. After bearing and suffering a pressurizing job due to overwork she was forced to get an early retirement. This was the first teaching stress case settled. She put the problem of work overload in writing since 1988 and this was the pivotal and winning point in her case. Whenever she complained they listened but took no action and provided no practical help. Her chronic stress resulted in anxiety, depression, anger and shingles. Under such condition it was too difficult for her to pursue a court case. She got justice but could not remove her sadness. Her advice to the teachers was not to suffer quietly but put everything in writing. Since then the NUT had initiated and supported hundreds of cases where teachers got large amounts of compensation for stress.

3. In the same year in June 1999 teacher Fiona Turner case was decided in her favor by the Bedfordshire County Council. She had filed a lawsuit of constructive dismissal and mentioned the facts that since a long time she was bullied and harassed by her school staff.

4. In May 2000 Geoff Hetherington, the deputy head won his case unanimously on the basis of an unfair and unjust dismissal. In *Hetherington v. Darlington Borough Council* the teacher proved before the employment tribunal that he had to face a painful experience of prolonged stress after the joining of a new head Mrs. Gill Wray in 1995. Teacher Hetherington ended his successful career of about 25 years duration after facing a continuous criticism, constant monitoring and false allegations of poor performance.

5. Again in 2000 Mr. Shropshire a 45 years old teacher received £300,000 compensation for suffering mental anguish and physical health problems as a result of workplace bullying by the head teacher.

6. In June 2000 a teacher Mrs Pepper was suspended from duty by the new headmistress Lyn Hurst. She wrongfully accused her of gross misconduct. She suffered strain and was almost close to a nervous break down by ending her spotless career. The employment tribunal decided the case in her favor and declared Mrs Pepper a blameless teacher and considered her dismissal as unfair and allowed her to continue her teaching position.

7. In 2004 Mrs Janice Howell, who was a teacher in a primary school in Newport, South Wales received an award of £250,000 in an out of court settlement. Newport County Borough Council, which administered the complaint and agreed to pay Mrs Howell £254,362 after admitting liability. The amount was around 12 times higher than her annual salary and was the highest paid out purely for classroom stress due to disruptive students' behavior including one who was expelled from two other schools. Due to pressures created by a group of 11 out of 28 students she suffered two nervous breakdowns and ultimately was forced to retire. 51 years old Mrs Howell remarked her case would prove an alarm bell for management to listen the complaints of their teachers. She suffered a nervous breakdown twice and remained on anti-depressants for about 6 years. She constantly complained her problems but the Head Teacher paid no attention. Mrs Howell's union, the NASUWT reported that there were about 120 cases of stressed teachers still pending for settlements and similar claims could cross millions of dollars and pounds if decided in favor of stress victims.

8. The same year another teacher was awarded £300,000, but that case was partly concerned bullying at the work place and ill-treatment by his woman boss as well as stress caused by teaching. .

9. In 2001 Mrs. Allan Barber suffered severe depression and was forced to get early retirement being declared as medically unfit due to chronic stress. In *Barber vs. Somerset County Council*, she received an award worth of £101,000 in compensation. Allan Barber suffered a nervous breakdown and therefore opted for an early retirement. She emphasized that her stress was quite visible because she submitted written and verbal complaints of being stressed due to an unbearable excessive workload. The House of Lords recognized the fact that although there was no breach of duty on the part of the employers yet they could reduce the work load of Mrs. Barber who already suffered a nervous breakdown and spent three weeks of sick leave to overcome her mental suffering.

10. Phil Danielson NATFHE (2001) reported in a press release the case of a former educator at Hull prison Mr. Phil Danielson. He was put to hostage by the inmate Charles Bronson with some criminal intent. He was awarded an amount of £65,000 as a compensation for the mental anguish born during his ordeal. The case was settled by the Home Office. Mr. Phil Danielson was taking a tutorial with the prison students when Charles Bronson burst in to by pushing him to the floor and took a knife piercing his ribs Mr. Phil was tied up and abused verbally and physically during the hostage which continued for 44 hours.

11. In 2002, Alan Powis a teacher at the age of 53 years, accepted to agree on an award for damages amounting £230, 000 against the authorities of Neath Council. In 1997, Mr. Powis, was forced to take retirement after facing the false allegations of misbehavior and misconduct. She suffered a continuous bullying by the head teacher Sheena Ball.

12. Roger Scruggs (2013) reported the case of Mr. A as a teacher's unusual phobia leading to lawsuit in Ohio. In

1969, the teacher immigrated to the United States from Cuba when she was eighteen years old. After completing her education, she began teaching French and Spanish language classes in the Ohio public school system. In 1997, the teacher was assigned to teach classes of junior students including elementary school students and she was unable to adjust with them. As a result she suffered extreme anxiety and informed the school authorities. The school permitted her to stay at the high school level.

In 2009, the school informed the teacher that it was planning to eliminate the French program in the coming year and the teacher informed some of her students' parents about this change in the curriculum. The school principal and superintendent then had a meeting with the teacher about what they considered to be her wrongful disclosure of that information and the school transferred the teacher to the middle school to start up the Spanish program there. The teacher stated that she successfully started the Spanish program but working with younger students with her disability proved adverse to her health. The teacher asked to be transferred back to the high school but was refused. The teacher alleged of a forceful retirement at the age of 59 in March of 2011 and sued the school authorities in Ohio alleging discrimination against her. Her claims were included in the Ohio law and were based on the following points;

- (a) Emotional Distress
- (b) Promissory estoppels
- (c) Discharge from service violating the Public Policy
- (d) Breach of Implied Contract.

Her claim was dismissed by the Court on point of public policy. The court held that her job contract was written and express contract. She was not an employee at will so she could not base her case on public policy violation against the school. The Court also dismissed the teacher's claim for discharge in violation of Ohio public policy.

The jurisdictions for claims of damages suffering emotional distress differ. The three basic theories related to compensation of damages are provided by the law of torts.

1. Intentional Tort
2. Negligent Tort
3. Aggravated damages when a case of emotional distress along with presence of physical injury is pursued.

The tort of intentional infliction of emotional distress is a relatively new tort; however, it is recognized in a number of jurisdictions. A plaintiff may recover damages if he or she can prove that the defendant intentionally inflicted the emotional distress. The tort is used most often in situations where the plaintiff was threatened with the use of physical force, but never actually suffered physical injuries. For instance, if the defendant threatened to assault the plaintiff, yet never actually did, the plaintiff may still have suffered considerable emotional distress damages as a result of the threat.

In order to receive compensation for any of the emotional distress torts, a plaintiff must first file a lawsuit against the defendant. Once the lawsuit has been filed, the parties may be able to work out a settlement for emotional distress damages outside of court. If a settlement is not agreed upon outside of court, then a trial will be necessary. At trial, the plaintiff will need to present evidence of the fact that he or she suffered an emotional trauma created by the defendant's conduct. The Witnesses testimony, medical files of treatment, and diary record are often good sources of evidence to prove emotional distress.

The employers need to show and prove that they have made all the possible efforts to provide a favorable work environment. Such cases tended to focus on the point of foreseeable stressful encounters which may arise during the work repeatedly and therefore make the employees aware and alert in anticipation. The courts are dealing with such cases with an extraordinary bold approach and making the employers more and more accountable to meet the individual and collective care of their employees.

The onus of proof in cases of negligence lies on the employees who need to prove the fault on part of the employers. The plaintiff must prove that he/she owed a duty of care on part of the defendant who was clearly in breach of his duty. In a claim based on negligence links the legal terminology of

1. Causation and
2. Foresee ability

If the plaintiff succeeds in proving that he/she suffered injury because of the defendant failure of the duty of care who knew in advance its harmful consequences he/she is entitled to receive compensation within a particular limit in lower court and beyond that limit in the High court. In Walker vs. Northumberland County Council the plaintiff Mr. Walker received an amount of £200,000 as liquidated damages, later on the amount was decreased to £175,000 by a mutual settlement between the parties concerned.

The National Union of Teachers NUT (2000) issued a pamphlet about how to tackle stress as one of the major problems faced by today's teachers emphasized the need for providing practical help, advice and guideline. Research studies conducted throughout the world indicate that teaching as compared to other occupations has

reached alarming levels of everyday stress. The British Educational Research Association, BERA has also confirmed the existence of effects of stress on the teaching profession.

The duty of care is quite a wide term and the employer need to perform this duty for the individual employee as a special case and the general employees collectively. An employee files a suit against the employer in the Civil Court and the High Court if it is a tort of negligence.

In legal analysis negligence covers both intentional and unintentional harm and mental injury caused due to careless conduct of the employer.

8. Discussion and Conclusion

In the light of the literature review and teacher stress cases discussed in detail it is concluded that H1 is supported stating that legal redress is available for mentally injured teachers. There is a need to create a greater awareness to follow and apply an appropriate legal procedure. Amount of reward for damages may vary and depend upon the nature and extent of psychological stress the harmful consequences, the Judge who ultimately reaches a conclusion based on the documentary evidence provided, the statement of the stress victim and the law of the land.

The law system prevailing is different in various countries. The classification of compensation in claims of damages is dealt differently depending upon the law of the land and legal redress available. In certain countries pain and suffering covers the ongoing situation including physical injury, disability and disfigurement etc. While in many countries such cases fall in the category of legal remedy provided in terms of general damages and accordingly the compensation is awarded. The premises of assessment of general damages need to be proved by the plaintiff in a lawsuit. If the

Judge hearing the case is satisfied by the proofs provided by the plaintiff he decides the case in favor but as for as the lump sum amount is concerned it becomes the responsibility and discretion of the Judge whatever amount deems fit and appropriate depending upon the nature and extent of the physical and mental harm. The legal counsel for the plaintiff may recommend a figure in the documents filed the ultimate determination and decision lies with the judge after examining the events deeply and thoroughly.

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- Hetherington vs. Darlington Borough Council
- Howell vs. Newport County Borough Council
- Lancaster vs. Birmingham City Council
- Mr.A vs. Shropshire County Council
- Muriel Benson vs. Wirral Metropolitan Borough Council
- Pepper vs. Lyn Hurst
- Phil Danielson vs. Home Office
- Sutherland vs. Hatton
- Walker vs. Northumberland County Council

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