



Are you an Employer? Criminal Liability for Work Related Stress.

In the recent case of *Department of Labour v Nalder & Biddle* (13 April 2005) Nalder & Biddle was charged (under sections 6 and 50(1)(a) of the Health and Safety in Employment 1991 that as an employer it failed to "take all practicable steps to ensure the safety of the employee" so causing an employee to suffer work related stress. Under the Act an employer can face criminal liability, including a fine up to \$500,000 and/or imprisonment, or a spot fine up to \$4,000. The point of interest is, that in this case, Nalder & Biddle did take prompt action to attempt to alleviate the pressure on the employee. However, the action taken was not enough.

Background to the case.

The employee commenced work in August 2003 as an assistant in the accounting department. Within a few days two of her colleagues in this area resigned and she was left to carry out their work. The employee told the Chief Executive that she was suffering stress. The company agreed she should employ two assistants to help ease the work load. People with appropriate experience could not be found and so two trainees were hired. A qualified accountant was employed in December 2003.

In January 2004 the employee was off work with chest pains, and was advised to stay away from work. However, she returned to work for a meeting but was unable to continue and was sent home on stress leave. The medical evidence found that her condition was directly related to the stresses on her in her employment.

Nalder & Biddle entered a guilty plea to the charge. The maximum fine (under section 50(1)) was \$250,000. The Court fined Nalder & Biddle \$8,000 plus medical expenses and costs.

Lessons to learn from this case.

- An employer must find a solution to alleviate the stress otherwise the employer has " not taken all practicable steps " and will be liable.
- An employer's obligations are the same whether there is potential injury to health or to life and limb.
- Where the employer is told of special medical difficulties, immediate remedial action is required. A partial solution is not enough.
- An employer must insist an employee stay away from work when on stress leave.

A further point, which did not arise in this decision, is that an employer can be fined up to \$4,000 by way of an infringement notice for failing to have in place adequate systems to identify hazards to employees (regardless of whether or not an employee actually suffers from the hazard).

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