



Stress and the City: should payouts be capped?

Antonio Horta-Osorio, the chief executive of Lloyds Bank, who is on long-term sick leave, is one of the more highly publicised examples of stress in the City

Luke MacGregor/Reuters

Jonathan Ames

November 17 2011 12:00AM

About 18,000 financial services and insurance employees have had work-related stress, depression or anxiety in the past year

City financial institutions already struggling against hostile market conditions are bracing themselves for a wave of multimillion-pound employee stress claims as the euro debt crisis worsens, leading specialist lawyers warned this week.

Square Mile sources suggest that at least three high-value actions have been launched within the past few weeks, with one eclipsing the £10 million mark. The soaring claims have spurred some to call on the Government to consider capping damages available to end the telephone-number awards and settlements now being doled out.

Generating the claims is an increased fear of further rounds of redundancy. Employment lawyers say rising numbers of City high-flyers are slapping employers - especially investment banks - with either personal injury or disability discrimination claims, neither of which are capped.

Indeed, banks are being hit twice, as even if they are insured against claims, their premiums rise dramatically after multimillion-pound pay-outs.

"Legal claims by employees in the City who have suffered from stress are reaching record levels," says the niche specialist legal practice GQ Employment Law.

While the recent departure of Antonio Horta-Osorio, the chief executive of Lloyds Bank, on long-term sick leave is one of the more highly publicised examples of stress in the City, lawyers say that the phenomenon stretches across the sector. GQ Law cites recent Health and Safety Executive figures estimating that 18,000 UK financial services and insurance employees have suffered from work-related stress, depression or anxiety in the past 12 months.

Those figures chime with a report from the Chartered Institute of Personnel and Development last month that said that stress has become the most common cause of long-term sickness absence across all employment sectors in the UK.

"The key issue for employers that have an employee who is suffering serious episodes and ramifications from stress," says Jon Gilligan, a former in-house lawyer at RBS and now a partner at GQ Employment Law, "is to listen carefully to what the occupational health team says and what the medical people say about what that employee can and can't do.

"It is vital that employers go through a process to ask whether there are any adjustments that need to be made so that the employee can move back up to full throttle. If the employer has not made reasonable adjustments, then there is a disability discrimination claim and damages are unlimited."

Other employment law specialists agree that City stress claims are on the up and that, ironically, the very nature of the dire employment market exacerbates the problem. "In an era of diminished job security," says Meriel Schindler, the partner head of employment at Withers, "people may also be more reluctant to come forward until they are very ill indeed".

Nonetheless, Schindler points out that despite the fraught working environment in the City, stress claims - whether based on personal injury, disability discrimination

or both - are still difficult to launch. "These are not easy claims to win because the claimant needs to show that the condition was reasonably foreseeable and many claims flounder on this."

Her fellow employment specialist lawyer, Bettina Bender, a partner at CM Murray, illustrates just how high the hurdles are for claimants. "Someone has to be very ill and never be able to work again - or at least not for a very long time - to reach large settlement figures," she says. "Just saying that you are stressed is not enough - you have to be into nervous breakdown territory."

And, indeed, one nervous breakdown is often not sufficient to get an action off the ground. Bender says: "Claims hang on whether the employer was aware of what was going on. If an employer is alerted to a problem, and fails to do anything to improve the situation, that's when there can be the possibility of a personal injury claim." So the rather crude rule of thumb in this field is that two nervous breakdowns are required for a winnable claim, with the employer aware of - but effectively ignoring - the first incident.

Even then, apportioning blame to the employer is not necessarily clear cut. There is potential for dispute over whether it was purely the work environment that caused the breakdowns or whether there were other factors outside work that influenced the employee's mental health.

Lawyers acting for predominately for City financial-sector employers maintain that their clients are doing their best to care for employees in difficult circumstances. "If someone goes off work with stress at the sort of businesses we work with," says Anna Rentoul, an employment law partner at Simmons & Simmons, "the employers work pretty hard to try to bring that person back in. They don't want to lose good people - they've got occupational health support and employee assistance programmes to manage getting people back to work."

Still, ministers would win favour in the City if they widened their review of employment law to consider curbing payouts for stress, says Rentoul. "It is good that the Government wants to reduce pressure on employers because it doesn't feel like a very level playing field at the moment," she says. "We see a lot of employers settling claims, not because they have any merit, but because it makes more commercial sense to do that rather than spending all the money and time fighting the claim through to a conclusion at court or tribunal."



Friends email Start your conversation here Start your conversation here

300