

26 MAY 2022

Stress, performance management and absence

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Question



How do you break the cycle if performance management has led to stress and, consequentially, absence and a refusal to return to work?

Case study



Performance management programme commences

Returns to work for 4 weeks

6 weeks later - still off with stress



Off sick for 4 weeks

Off sick again with stress

What should the employer do?

Legal risks



- Personal injury claims
- Constructive dismissal
- Unfair dismissal
- Discrimination or harassment
- Breach of statutory duty – health and safety, risk assessments

What should HR do?



- Communication
- Medical condition?
- Adjustments?

Risk Assessment



- Demands
- Control
- Support
- Relationships
- Role
- Change



- OH referral form:
 - Nature of condition and symptoms
 - How long has it lasted and is likely to last?
 - Effects on the normal day-to-day activities
 - Any medication and the effects of it?
 - Triggers for condition – both inside and outside the workplace
 - Any adjustments the employer might make to assist the employee's return to work?
- Legal considerations
 - Data protection
 - Consent – common law duty

Occupational Health - further considerations



What if Sam does not give his consent?

- O'Donoghue v Elmbridge Housing Trust 2004 EWCA Civ 939, CA,
- Matthews v British Telecommunications plc ET Case No.2205791/10

How far can OH reports be relied upon?

- Gallop v Newport City Council [2013] EWCA Civ 1583
- Donelien v Liberata UK Ltd [2018] EWCA Civ 129

Next steps?



- Meetings
- Return to work?
- Return to work meeting?

Options



- Alternatives to dismissal:
 - Redeployment/alternative role
 - PHI
 - Early retirement

- Dismissal
 - Poor performance?
 - Long term ill health?
 - Short term absences?

Contact



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