

# Stress and anxiety

In a grievance, disciplinary or under-performance situation, what must you do – practically and legally – if the employee responds by taking long-term sickness leave, for reasons of stress or anxiety?

Frances Ross, Partner

5 November 2019

# Agenda

- The scenario
- What are stress and anxiety
- Legal requirements and practical tips
- Consequences of getting it wrong
- Liability for stress



Scenario



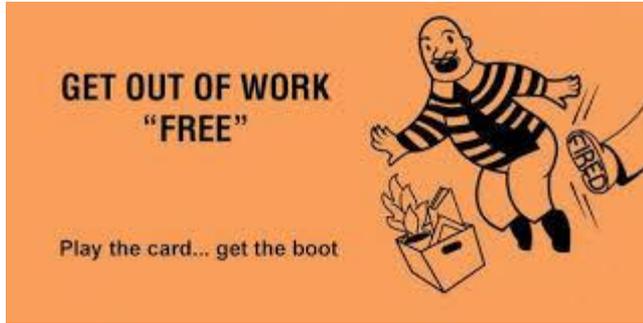
OR



OR



What should you as the employer do?



# Stress and Anxiety

## Stress

"The adverse reaction people have to excessive pressures or other types of demand placed on them at work"



# Stress and Anxiety

## Stress

- Not an illness
- Can lead to mental/ physical illness
- Anxiety/ depression/ heart disease/ back pain/ gastrointestinal illnesses/ skin conditions
- C.44% of work-related illness
- 595,000 people in UK in 17/18

## Anxiety

- Can be medical condition in its own right.



## Legal Requirements and Practical Tips

- Maintain communication
- Treat as genuine illness
- Be fair but firm
- Pay?
  - *Wright v Weed Control Ltd* UKEAT/0492/07
  - *Heatherwood & Wrexham Park Hospitals Trust v Beer* UKEAT/0087/06



## Legal Requirements and Practical Tips

- <2 years service – nuclear option?
- Provide support
- Keep formal processes intact
- Continue with investigation (where relevant)
- Short-term absence – complete on return
- Long-term absence – medical advice



## Legal Requirements and Practical Tips

- Appropriate to continue?
- Consider adjustments
  - Neutral venue
  - Companion
  - Written submissions
  - Representative
- Right of appeal



## Consequences of getting it wrong

- *Private Medicine Intermediaries Ltd and Others v Hodgkinson* UKEAT/0134/15
- *William Hicks & Partners (a firm) v Nadal*, UKEAT/0164/05/ZT, 16 August 2005



## Liability for Stress

- Health & Safety at Work Act – general duty
- Negligence
  - Easton v B&Q plc [2015] EWHC 880 (QB)
  - Yapp v Foreign and Commonwealth Office [2014] EWCA Civ 1512
- Protection from Harassment Act 1997
- Harassment under Equality Act 2010
- Breach of implied term of trust and confidence
- Disability discrimination



## Takeaways

### DON'T

- Assume the employee is malingering (without evidence)
- Apply unreasonable pressure BUT
- Let matters drift

### DO

- Consider justification for proceeding
- Consider adjustments
- Offer support
- Get medical advice





Frances Ross, Partner

[Frances.Ross@clydeco.com](mailto:Frances.Ross@clydeco.com)

0141 353 8688

 [@fremplawyer](https://twitter.com/fremplawyer)