

Hong Kong Employer's Liability for Stress-induced Psychiatric Illness in Workplace

香港雇主在职场压力引致精神疾病方面的责任

Two-thirds of Hong Kong employees consider themselves “more stressed” than ever in the workplace according to a recent survey. In this article, DLA Piper discusses employers’ liability for employees’ psychiatric harm caused by work stress, suggests precautions that employers should take and best practices.

一项调查显示，三分之二的香港员工认为在职场从未感到如此大压力。欧华律师事务所会于本文论述在员工因工作压力受到精神损害时，雇主可能要面对的责任、应采取的预防措施，以及最佳做法建议。



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Workplace stressors: Hong Kong

According to a 2015 global employment study by Regus, two-thirds of Hong Kong respondents complained of feeling "more stressed"^[1]. When considering the causes of stress in the workplace, Hong Kong workers again seem to suffer more than the global average. 24% of Hong Kong workers reported finding working to deadlines to be "very stressful", as compared with an average of 14% worldwide. Echoing a situation most office workers can probably empathise with, 26% of employees in Hong Kong cited "unreliable technology" as their main source of stress; slightly higher than a global average of 21%. However, 11% of respondents in Hong Kong viewed their colleagues as a "significant source of stress", as compared with a global average of 5%^[2].

This paints an interesting picture for HR and personnel managers in Hong Kong. With two-thirds of their workforce feeling "more" stressed, what can be done to improve these statistics? And what are the risks for employers of allowing work-based stress to go undetected?

Employer's liability

Employers are liable for foreseeable injuries suffered by an employee at work under the common law of negligence, the implied contractual term of mutual trust and confidence, and the *Employees' Compensation Ordinance* (Cap 282). However, to be liable for an employee's psychiatric harm, this must have been a foreseeable consequence of the employer's behaviour.

Psychiatric harm was not a foreseeable consequence: employer not liable

In the UK Court of Appeal case of *Yapp v Foreign and Commonwealth Office* ("FCO") last year, Mr Yapp had worked at the FCO with a flawless record for 37 years. His final posting was as the British High Commissioner in Belize. He was suspended in 2008 after being wrongly accused by a local politician of inappropriately touching the politician's wife at a social gathering. Despite the allegations being unsupported by any evidence, Mr Yapp was subject to disciplinary proceedings and removed from his position. Following his suspension, Mr Yapp became clinically depressed. However, while the Court agreed that Mr Yapp's demotion was a breach of contract, they found that he was not entitled to recover damages for his illness. Although the judges accepted that the FCO's actions had in fact caused Mr Yapp's depression, they did not find that his psychiatric injury was a foreseeable consequence.

香港: 职场压力严重

根据2015年雷格斯 (Regus) 有关全球就业的一项研究, 三分之二的香港受访者抱怨觉得“压力很大”^[1]。当考虑到职场压力成因时, 香港员工遭受的压力似乎再次超过全球平均水平。24%的香港员工表示赶在最后期限前完工“非常大压力”, 而全球在此范围的数据平均为14%。与多数上班族一样, 26%的香港员工认为“不可靠的科技”为压力的主要来源, 这比21%的全球平均水平略高。然而, 相比起全球平均水平的5%, 11%的香港受访者认为同事是“压力的一个主要来源”^[2]。

这反映香港企业的人力资源部门和人事经理面对的一个特殊情况。当有三分之二的员工感到“压力很大”, 企业能做什么去改善? 另一方面, 忽视职场压力会给雇主带来哪些风险?

雇主责任

根据普通法中就着疏忽的案例、相互信任的默示合同条



款，以及《雇员补偿条例》（第282章），雇主应对员工在工作中遭受的可预见损害负责。然而，只有当员工的精神损害是雇主行为的可预见后果时，雇主才须为该损害负责。

精神损害不是可预见的后果：雇主不承担责任

去年，英国上诉法院审理了亚普诉外交和联邦事务部（Foreign and Commonwealth Office, “FCO”）案（*Yapp v Foreign and Commonwealth Office*）。亚普先生在FCO工作了37年，无犯错纪录。他最后的职位是英国驻伯利兹高级专员。他在2008年被当地一名政客错误指控在社交场合不当接触其妻子后被停职。尽管这些指控没有任何证据支持，亚普先生还是受到纪律处分，并被解雇。停职后，亚普先生患上了抑郁症。尽管法院认同亚普先生的降级违反合约，但仍判决他无权就其病症获得损害赔偿。虽然法官接受FCO的行为实际上导致亚普先生的抑郁症，他们并没有判决其精神损害是可预见的后果。

同样地，在英国高等法院今年早些时候的一个判决中，原告伊斯顿先生亦没有获得雇主需要对其压力相关疾病负责的判决。伊斯顿先生是英国家居建材店百安居（B & Q）的

一位分店经理。伊斯顿先生在百安居工作时间不短，而且颇为成功。但是，随着商店运作方式的改变、建筑工程的持续进行（这为伊斯顿先生所在的分店带来干扰），以及伊斯顿先生相信自己不公平地未获晋升，他最终因由压力引起的疾病停止工作。伊斯顿先生称，百安居对此有所疏忽，故应该为他后来无法工作的后果承担责任。在他患病前，伊斯顿先生没有向公司通报其任何忧虑，也没有告知公司他疲于应付。法院认定他的疾病是雇主不可预见的。

精神损害是可预见的后果：雇主承担责任

在2009年苏格兰的麦卡锡诉高地理事会（*McCarthy v Highland Council*）案件中，地方教育主管部门要对一位曾在特殊教育学校工作遭受精神损害的前教员承担责任。该教员受到一名学生的一连串袭击。在第一次袭击后，学校的人员分配和其他方面都未有改变。后来，课堂上聘用了一名男性辅助人员，但这位老师还是因为抑郁症停止了工作。她起诉并成功获得赔偿，理由是在第一次袭击后，学校本应重新评估工作人员分配的结构，并采取措施防止袭击再次发生（例如通过培训、安装紧急警报器，或增加工作人员）。法院认为，教师所受的精神损害是将她留在一个易受伤害的环境下的可预见后果。



Similarly, in a decision of the UK High Court earlier this year, the claimant, Mr Easton was not successful in holding his employer responsible for his stress-related illness. Mr Easton was a store manager for the UK home improvement store “B&Q”. Mr Easton had enjoyed a long and successful employment with B&Q. However, following changes to the way the store operated, ongoing building works (which caused a lot of disruption to Mr Easton's store) and believing he had been unfairly passed over for promotion, Mr Easton was signed off work with a stress-induced illness. Mr Easton claimed that B&Q had been negligent, and should be liable for the consequences of his subsequent inability to work. Prior to his illness, Mr Easton had not communicated any concerns to the company, nor had he told them he was struggling to cope. The Court found that his illness was not foreseeable by the employer.

Psychiatric harm was a foreseeable consequence: employer liable

In the Scottish case of *McCarthy v Highland Council* in 2009, a local education authority was liable for

雇主应知道什麼？

- 可预见性取決於雇主对员工个人的了解（或在合理的情况下应该的了解）。在正常情况下，雇主有权假定员工能够承受正常的工作压力，除非他了解某些特殊问题或弱点。
- 雇主的某些行为使得员工生气、沮丧、不满、疲惫或尴尬可能是可预见的；但工作中的普通事件与导致有精神损害的事件是必须区分的。
- 判断对某员工的伤害是否为合理可预见的相关因素包括：
 - 员工所做工作的性质和范围；
 - 工作量对该职位来说是否远远超过正常水平；
 - 该工作对於该员工是否在智力或情感上要求特别高；
 - 与从事相同或类似工作的其他员工相比，有否对该员工提出无理要求；
 - 有否迹象表明其他从事此工作的人正遭受达危害程度的压力；以及
 - 同一工作或部门是否有异常水平的旷工现象。

- 员工可能易受精神损害的征兆：
 - 他/她以前曾因工作压力致病。
 - 他/她有特殊的问题或弱点；
 - 他/她异常频繁旷工或曾长期旷工；
 - 雇主有理由认为导致工作压力的因素存在，如来自员工或他人的投诉或警告。

雇主需要考虑的因素

- 如果上述答案均为否，员工要确立所受到损害的可预见性会比较困难。
- 但是，如果上述任何因素存在，则责任转移到雇主一方。
- 一般来说，员工在个别场合表现出与其性格不符的行为不太可能作为潜在精神疾病的指标，因为这种反应可能出於其他原因（例如员工正经历离婚、丧亲，或仅仅遭遇了不顺的一天）。但是，如果这种症状或行为一直持续，那麼雇主就应该进一步调查。
- 一般情况下，雇主有权相信员工的说话，除非当中有

damages to a former teacher who suffered psychiatric harm after working at a special educational needs school. The teacher was subject to a series of assaults on her by a pupil. Following the first incident, staffing levels remained the same, and no changes were made. Eventually, a male support worker was employed in the classroom, but subsequently the teacher was signed off work with depression. She sued for damages, and was granted these on the basis that after the first assault, the school should have reassessed the staffing structure, and taken steps to prevent any future attacks (for example though training, installing emergency alarms, or increasing staff levels). The Court found that the teacher's psychiatric injury was a foreseeable consequence of leaving her in a vulnerable situation.

What does the employer need to know?

- Foreseeability depends on what the employer knows (or ought reasonably to know) about the individual employee. An employer is usually entitled to assume that the employee can withstand the normal pressures of the job unless he is aware of some particular problem or vulnerability.
- It may well be foreseeable that certain behaviours by the employer will leave the employee angry, frustrated, unhappy, tired, or embarrassed; but a distinction

must be drawn between ordinary incidents of working life and active psychiatric injury.

- Factors likely to be relevant in determining whether this kind of harm to a particular employee was reasonably foreseeable include:
 - the nature and extent of the work done by the employee;
 - if the workload is much more than is normal for that role;
 - if the work is particularly intellectually or emotionally demanding for this employee;
 - if unreasonable demands are being made of this employee compared to others in the same or comparable jobs;
 - if there are signs that others doing this job are suffering harmful levels of stress; and
 - if there is an abnormal level of absenteeism in the same job or department.
- Signs from the employee that they may be vulnerable:
 - he/she has previously suffered from an illness attributable to stress at work;
 - he/she has a particular problem or vulnerability;



o he/she has been frequently absent, or had prolonged absences, which are uncharacteristic;
o there is reason to think these are attributable to stress at work, perhaps because of complaints or warnings from the employee or others.

Considerations for employers

- If any of the above are answered in the negative, it will be difficult for the employee to establish the necessary foreseeability of harm.
- However, if any of the above factors are present, the burden shifts to the employer.
- As a rule, witnessing an employee behaving out of character on an isolated occasion is unlikely to be an indicator of an underlying illness, as this may be explicable by other causes (for example, if an employee is going through a divorce, or has suffered a bereavement, or is simply having a bad day). However, if such symptoms or behaviour persist, the employer should enquire further.
- Generally, the employer is entitled to take what the employee says at face value, unless there is good reason to reach a contrary conclusion. As such, the employer does not have to make detailed enquiries of the employee.
- If the employer's conduct is extremely devastating,



理由做出相反结论。因此，雇主不必详细询问员工。

- 如果雇主的行为是极其具破坏性的，即使是正常稳重的员工也可能产生抑郁是可合理预见的。
- 如果雇主能预见“普通”工作压力会导致精神损害的风险，其应该给员工提供咨询或其他支持服务。在判定雇主就员工压力所致的疾病是否负有潜在责任时，雇主有否给员工提供咨询或其他支持服务是一个相关的因素。

实用建议

- 鼓励所有管理者对员工行为、情绪或工作量方面的变化保持警觉。
- 如果有员工报告说他们疲於应付，则应该关注情况。
- 如果企业提供内部咨询服务，应确保所有员工都知道。
- 如果员工未能向公司提出其问题，那么其所遭受的任何损害不大可能是可预见的。

即使员工遭受不公平待遇是疾病的直接成因，这不会自动导致精神损害索赔成功。损害必须是雇主行为的可预见后果。✍

如果您想进一步讨论本文内容或有意为贵公司安排培训，敬请联系 julia.gorham@dlapiper.com, anita.lam@dlapiper.com 或 bethan.lloyd@dlapiper.com。

it will be reasonably foreseeable that even an employee of ordinary robustness may develop a depressive illness as a result.

- If the employer should have foreseen the risk of psychiatric injury as a result of "ordinary" stress at work, it should offer counseling or other support services to the staff. Offer of counseling and support services is relevant to determining the employer's potential liability towards the employee for his stress induced illness.

Best Practices

- Encourage all managers to be alert to any changes in employees' behaviour, mood, or workload.
- Should an employee report that they are struggling to cope, this should be looked into.
- If in-house counselling services are available, ensure all employees are made aware of this.
- If an employee fails to bring his/her problems to the company's

attention, it is unlikely any harm suffered will be foreseeable.

Unfair treatment of the employee will not automatically lead to a successful claim for psychiatric harm, even if this directly causes the illness. The injury must have been a foreseeable consequence of the employer's action. ✍

If you wish to discuss the contents of this article further, would like advice on steps you can take to protect your company when installing surveillance software, or are interested in arranging training for your company, please contact julia.gorham@dlapiper.com, anita.lam@dlapiper.com or bethan.lloyd@dlapiper.com.

^[1] <http://www.scmp.com/news/hong-kong/article/1740529/instant-messaging-invading-hong-kong-workplace-new-survey-says>

^[2] <http://cw.com.hk/news/unreliable-tech-top-cause-stress-hk-workers>