

PREVENTING EMPLOYMENT STRESS CLAIMS

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The rise of employment stress claims in recent years concerns employers, with broadening workers' compensation laws as well as new federal avenues for litigation making it more likely that any employer can be sued. In addition, workplace violence is frequently seen as either the result of tension within an organization or as a source of tension to all employees. Ultimately, stress related illness and stress claims cost the employer. Employers pay eighty percent of health insurance payments along with required workers' compensation coverage. Legal fees to defend stress claims can also be substantial. Finally, there are indirect consequences to the employer in the form of absenteeism and reduced quality of production. This translates to a higher cost for goods and services. While much has been written about the causes of this rise in employment stress claims, the employers' focus should appropriately be on preventing them. A two-fold strategy is recommended: reducing workplace stress and protecting against litigation.

Reducing Workplace Stress

Reducing workplace stress can be approached by addressing the factors within both the organization and the employee. Where the emphasis should be greater has traditionally been a point of difference between management and labor. For example, management typically sees stress as an individual employee response. Studies show that managers choose to recommend interventions that teach individual responsibility and improve coping skills of the employee. On the other hand, labor (and union leaders) typically advocate interventions at situational and environmental stimuli. They would recommend changes in organizational structure and other system variables such as work content, task demands and quality of supervision.

Addressing *organizational factors* is not only helpful to reduce employee stress, but presumably helps the efficiency of an organization. Analysis of working conditions starts with an assessment of physical plant factors, i.e. noise, lighting, air quality, etc. It also includes an assessment of the effectiveness of the company structure and job design. Most people want to work, not only for the money, but also for what work brings to their lives. They want to work in spite of the fact that many hold jobs that do not use their abilities well. Successful jobs are those that recognize a persons' inherent need to be useful and productive. In surveys of employees, task content is rated as the most important factor in work satisfaction.

Selecting employees whose personal style and background is suitable for a job is also important. Subsequently, adequate training and development will increase the security and sense of challenge that the employee feels. Certainly, no one type of structure fits every company, but companies that allow participation and some level of autonomy in preferences and practices i.e. decision latitude, are less likely to be stressful for an employee. Some research studies, for example, have shown that lack of decision latitude, as well as job dissatisfaction generally, are important predictors of industrial disability.

The interface between employer with employee, and employee with other employees is a critical area which is frequently a source of stress. Company objectives should, as a minimum, attempt to foster the development of an atmosphere of mutual trust and cooperation. From a management perspective, that requires proper leadership training. Constructive means at motivation, team work, and effective conflict resolution are all points of concern. Conducting

internal surveys or investigations of stress generators allows employers to identify an hopefully rectify those problems before they lead to a stress claim.

Approaches focusing on *employee factors* have received a great deal of attention throughout business and industry, and stress management interventions have become popular. Some of these interventions help employees to cognitively redefine their environment. This means that employees are taught to learn alternate and more effective ways of appraising stressful situations. This can be in the form of modifying their own expectations, reality testing, and improved understanding of individual differences. In a simple analogy, employees learn to rethink how they understand their work e.g. this is not a problem, this is a challenge.

Other means of stress management intervention focus even more specifically on an employee's emotional responses. Many corporations today are committed to general wellness and health programs. The theory, of course, is that healthy employees are more satisfied with their life and with their work. They are also more likely to see their employer as concerned with their welfare. Programs that promote exercise, smoking cessation, hypertension screening and control, weight and nutritional counseling are examples of this. In addition, a number of programs have been introduced to more directly deal with emotional and stress issues. Meditation, relaxation techniques, group discussions and sensitivity training are examples. Also, time management, goal setting and interpersonal effectiveness can be taught in a program format. While some of these programs have had a slow start, studies show that there has gradually been increased participation when they are available. Outcome research has documented their beneficial effects.

Finally, employee assistance programs (EAPs) have been widely used to give an opportunity for early intervention when problems arise. Many of these programs started in recognition of the substantial percentage of the work force that may have alcohol or drug abuse issues. However, they have now grown to be a first line intervention in many psychological and stress problems. EAPs can be established within a company itself or contracted out to a private organization. Confidentiality is maintained for the employee, but the EAP can serve as an important interface between the employee and employer on issues that concern both. Early interventions of this kind can prevent a stress problem from becoming a stress claim.

Protecting Against Litigation

Probably the best protection against litigation is making the right selection of an employee at the time of hiring. Frequently, employees who have had problems in previous work settings will continue to show similar problems in any work setting, and create personnel issues. Many employment stress claims are a result of personnel issues either directly or indirectly. So, for example, when an employer had to then take corrective action for performance problems, disturbing personality traits, poor motivation, or frank misbehavior, this creates stress. Such personnel issues are often the background of not only workers' compensation claims, but also of sexual harassment, wrongful termination, defamation, lack of accommodation, etc. If the employee has created these issues in the workplace because of the employee's own behavioral patterns or maladaptive personality, then the stress claim may serve as a convenient escape, retaliation or opportunity for financial security. It is important, therefore, to recognize employees that may have such propensity through a careful background search. Screening for personality disturbance, of course, must be done with great care to avoid a potential claim on the Americans with Disabilities Act (ADA). But, inquiry into how this candidate performed in other work settings is appropriate. Frequently, background checks are not done and previous employers are not actually contacted.

After hire, it is important that performance evaluations be a routine part of tracking an employee's progress. Some employers avoid performance evaluations because they are uncomfortable with confrontation or are afraid to disturb morale. However, this is a mistake. Carefully documented performance evaluations, done in a constructive but honest manner, can be helpful to both employer and employee. The significance of this cannot be overstated. For example, once an employee had filed a stress claim, a pattern of poor performance may be a relevant issue. Yet, if performance evaluations have not been done or previous difficulties have not been documented, the employee may be presumed to have been performing well prior to the incidents which are now raised as the cause of stress.

Because of the rise of employment stress claims, employers should create an atmosphere of heightened sensitivity to such issues. Allowing employees to provide input on stressors within their organizational structure may help diffuse a potential claim. Understanding that some employees may be unusually sensitive is also important. Training managers to know what is appropriate and what is inappropriate behavior, and what will not be tolerated can be helpful. For example, with sexual harassment issues, there should be a generally accepted policy of no tolerance. Employers and employees should be aware that even if some behavior is not technically illegal, it may still result in a stress claim.

Employers should develop established procedures for dealing with complaints. In the case of sexual harassment and discrimination, especially, complaints should be encouraged. Once raised, complaints should be investigated promptly and completely. Employees should know that there will be no negative consequences from issuing a complaint. By establishing and implementing such procedures, employers give their employees the message that their complaints will be treated fairly and there will be no coverup. Following an investigation, the employee who made the complaint, should have proper feedback about the results. If discipline is to be applied, then it could be done in a methodical and consistent way, which is both incremental in response as well as sensitive to more egregious behavior.

Employees with mental impairment may need to be accommodated if they can still perform the essential functions of the job. Flexibility in this regard by an employer will not only avoid an ADA claim, but may result in a productive satisfied worker. Typical accommodations include flexible leave from mental health problem, time off for professional counseling, extra tolerance for unusual behavior, written instructions where appropriate and flexible work schedules. Identifying which mental impairments substantially limit major life activities and which are merely being raised to accommodate behavioral disturbances, is an important area of assessment.

In general, good labor practices which increase morale, motivation and productivity will also help avoid employment stress claims. Because work, by its very nature, is stress, it is impossible to completely avoid stressful conditions. The actions that an employer takes out of organizational necessity or because of a business climate, may result in stress regardless of the manner in which they are enacted. However, taking employees' stress seriously and protecting employees from undue stress is humane and responsible. Being sensitive, therefore, to the threatening effect of reorganization, expansion, downsizing and lay-offs, and other such employment decisions may help avert negative reactions. Steps can often be taken to accommodate particularly sensitive individuals to help deal with these potentially negative damaging consequences.

Employment stress claims are a complex organizational and socio-cultural problem which cannot be explained by one set of factors alone. Employers will be helped to deal with this phenomenon and will prevent unnecessary litigation by addressing the problem through a multi-level approach that looks at factors within both the organization and the employee (See

Ivancevich, J.J., et al: Worksite Stress Management Interventions. *American psychologist*, 45 (2) 252-261, 1990).