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Employers' Liability for Occupational Stress and Death from Overwork in the United States and the United Kingdom

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Abstract

The premise of this article is that those persons that excessively overwork can die as a result through stress related illness or suicide. In this article we will undertake a comparative analysis of the legal treatment of stress related illness at work and in particular death by overwork (known as Karoshi in Japan). The legal rules governing this aspect of health and safety in the United States and the United Kingdom will be considered primarily, because these are countries where this problem has not been properly recognised and accordingly legislators and the judiciary in both the US and the UK have largely failed to address it.

Despite this it is a fact that organisations in these countries have the worst record for requiring their workforce to work excessively and/or for long-hours. Research has shown this leads to stress related illness and sometimes death by overwork in organisations.

The failure to take legal action to deal with this problem in the US and UK is all the more surprising and disappointing because these countries (alongwith Japan where it is legally recognised) have the richest economies in the world. It is now accepted that a working pattern and culture of long hours and excessive working adversely impacts on workers by putting at risk their physical and/or mental health and it is important to consider how workers in this position are dealt with by employers and within the legal framework of both jurisdictions.

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Introduction

Interestingly in Japan where liability for death by overwork is legally recognised and compensated for under the civil law ⁱ the terms Karoshi (death by overwork) and Karojisatsu (suicide by overwork) are used and widely recognised. ⁱⁱ There are no equivalent terms used in the US and the UK where death at work tends to be only recognised by all parties (the judiciary, health and safety enforcement bodies, employers, employees and to a less extent trade unions) in relation to health and safety issues such as accidents at work, longstanding exposure to hazardous substances etc. Accordingly the liability or more appropriately lack of liability of employers for work-based stress experienced by employees leading to their death under the legal framework in both jurisdictions needs in our view to be highlighted.

The difference in the legal approach to this matter between Japan, the United States and the United Kingdom could be explained by the fact that these issues in the UK and US are less widespread but also that the cases there of death by overwork are not currently recognised as being related to the workplace and therefore not the responsibility of the employer.

Death from overwork in the United States

This is undoubtedly a problem in the United States which has only recently been recognised. with the result that currently there is no legal remedy for the bereaved relatives of those that die through overwork. In March 2002 a New York journalist, Matthew Reiss, summarised the findings of a study undertaken by the health insurer Oxford Health Plans as follows:

“One in five Americans show up for work whether they’re ill or have a medical appointment. This same obsession keeps one in five Americans from taking their vacation – a failure which has been found to put individuals at risk of early death.” ⁱⁱⁱ

American workers tend to work more than 40 hours per week on average with only 2 weeks paid annual leave, which they rarely take for fear of losing their jobs. This is symptomatic of the growing culture of presenteeism which has developed in companies throughout the world but is clearly prevalent in the US and is characterised in the following quote.

“Time was when toiling 60 hours a week signalled that you were a corporate warrior, willing to put work at the top of your life’s priorities. Now, with corporate downsizing forcing staffers to shoulder the load of fallen colleagues, and a job market still so frosty that workers know they go home early at their peril, folks far down the corporate food chain are often logging gruelling hours, less because they’re passionate about their work than because they’re scared not to.”^{iv}

Recently in an article in a leading American journal^v the authors highlighted the emerging phenomenon of ‘Extreme Jobs’ in corporate managerial positions in US companies. They commented on the fact that many managers thrive on challenge and are clocking up 70 hour or more a week. Some work 100 hours or more when their jobs are ‘high stress and high risk’ and their job demands have greatly increased. The Bureau of Labour Statistics in the US reported in 2004 that about 17% of managerial workers worked more than 60 hours a week. This culture of long working hours characterised by: work pressure, job insecurity, mandatory overtime and voluntary sacrifice, comes with a price.

Long hours and stress affects people’s private lives and take its toll on individual worker’s health and well-being. It can lead to stress related illness such as: chronic fatigue, cancer and heart disease and increases the risk of accidents and injuries. According to the American Institute of Stress, job stress is estimated to cost US industry \$300 billion annually resulting from: accidents, absenteeism, employer turnover, diminished productivity, direct medical, legal, insurance costs, workers’ compensation awards as well as tort actions.^{vi} Furthermore the National Council on Compensation Insurance claim that “the

average cost of a mental stress claim is 52% higher than the average traumatic injury claim and such claims last 16 weeks longer than a physical injury claim”.^{vii}

An example of the escalation in legal claims can be seen in the State of California where mental stress is recognised as a compensatable injury and stress claims through workers’ compensation increased between 1979 and 1988 by 700%.

Death from overwork in the United Kingdom

As expected the United Kingdom is not immune from the long hours working culture in organisations and its consequences. This is despite the introduction of the Working Time Regulations in 1998 which amongst other things introduced a maximum working week of 48 hours. One of the reasons its impact has been limited in the UK is that workers can opt-out in writing of the 48-hour limit on working hours in response to direct or indirect pressure of management or colleagues or through their own choice. The UK is the only European country that still has this exemption.

According to the Trades Union Congress in 2004^{viii}, “four million workers in the UK work more than 48 hours a week on average. That’s 700,000 more than in 1992 when there was no long hours protection.”

The Health and Safety Executive’s carried out a survey in 2005 which found that “around 420,000 individuals in Britain believed in 2004/05 that they were experiencing work-related stress at a level that was making them ill”.^{ix}

More significantly the Trades Union Congress (TUC) in 2003 estimated that there were well over 100 cases of work-related suicide per year. ^x Nevertheless none of these deaths are included in the workplace death figures in the UK and work-related suicide is not monitored by health and safety organisations. The Government has also failed to monitor the statistics for work related deaths caused by stress.

There have been many incidents reported where workers committed suicide due to work pressure and workload. Both UNISON and TUC's Hazards Magazine have reported numerous cases of work related suicides in recent years. and here is just a selection of them. ^{xi}

It is clear from the position outlined above that in both countries death by overwork is a reality for them which has up until now gone largely unrecognised.

Stress

The Health and Safety Executive (HSE) in Britain has defined stress as

“The adverse reaction people have to excessive pressures or other types of demand placed upon them.”

They identified six key areas as risk factors for occupational stress: demands of the job, control over work activities, level of support, relationships at work, role in the organisation and finally changes at work and how they are managed. ^{xii}

Researchers recently summarised the background to occupational stress and identified factors which place added pressure upon workers. ^{xiii} This included: globalisation particularly working cross-culturally while responding to different management styles and working across different time zones; higher expectation of workers to improve productivity using less resources leading to excessive workload; technological changes making work possible seven days a week; organisational changes leading to uncertainty and fears for job security; difficulties for workers in maintaining family and work balance and finally physical violence, harassment and bullying against them in the workplace.

In addition the practice of ‘presenteeism’ that derives from the long hours culture of certain organisations and plays upon employees’ fear of loss of income or employment and can lead to them going to work

despite being ill. They are obliged to “work extra long hours in order to demonstrate their commitment and indispensability.”^{xiv}

The World Health Organisation (WHO) stated that “the most widespread negative effect of work on mental health is stress” and explained that stress can not only lead to psychological problems and mental illness, such as anxiety and depression, but also to physical diseases and health problems such as heart attacks, high blood pressure, ulcers, headache, neck and back pain, skin rashes and low resistance to infection.^{xv}

United States - The Legal Framework

Background

In Japan the concept of karoshi is well known to the extent that the Government recognises it as a compensatable occupational disease. In the United States: “similar phenomena have been reported, for example... usually among elite business people working in the financial sector, such as Wall Street stockbrokers.”^{xvi}

Americans have a strong work-oriented culture and the standard working hours are 40 hours per week with two weeks annual paid leave however, almost one-third of the workforce regularly work more than 40 hours and one-fifth work more than 50 hours.^{xvii} Approximately 44% of “exempt” workers under Section 13 of the Fair Labour Standards Act of 1938 (FLSA) mostly executives and supervisors and certain administrative and professional employees work longer than 40 hours per week compared to approximately 20% of non-exempt workers.^{xviii} In an article published in Fortune magazine in 2005 about the culture of employees working 24/7 in the United States the writers highlighted the move away from working conventional office hours. “The 40-hour workweek, it seems, is a thing of the past. Even the 60-hour workweek, once the path to the top, is now practically considered part-time”.^{xix}

In another article the commentators^{xx} also cited the emerging phenomenon of the ‘extreme job’ which was defined as involving a working week of 60 hours or more.

The common characteristic of job holders undertaking such extreme jobs are high earners in positions where the job consists of: an unpredictable flow of work, fast-paced work with tight deadlines, inordinate scope of responsibilities that amount to more than one job, availability to clients 24/7 and a physical presence in the workplace for at least ten hours a day.^{xxi}

The Legal Background

The percentage of union representation in the United States is small and accordingly terms and conditions of employment are principally determined through representation and bargaining at individual sites (or ‘plant-level’ bargaining) rather than through national collective bargaining and collective agreements as in other countries such as the United Kingdom. Accordingly in the United States most employees rely on the law for employment rights which are provided by Federal and State law. Examples of federal statutes in the US that are relevant are the Fair Labour Standards Act (FLSA) which provides minimum wage and overtime compensation and the Occupational Safety and Health Act (OSH Act) which provides protection against conditions in the workplace that represent a risk to health and safety. On this latter point individual States in the US also provide protection in terms of health and safety under their own legislation.

A leading commentator explains the relationship between Federal and State Authorities as follows.^{xxii}

“The States, with considerable pressure and incentive from the Federal Government, passed laws to regulate worker’s compensation benefits for work-related accidents and illness and laws to regulate unemployment insurance benefits.”

The main route for workers seeking compensation for occupational stress under the State systems tends to be through Workers Compensation Insurance that typically provides cash payments and the cost of full medical treatment for employees that are covered and who become disabled as a result of a work-related disease or injury, or for qualified dependents of a worker that dies from a compensatable injury or illness.

^{xxiii} In exchange for receiving this insurance workers may have to waive the right to bring civil actions under the law of tort against employers. In the states of California and Massachusetts they do not allow the courts to hear work-related stress claims based on breach of duty under the law of tort and will only permit them to be dealt with as workers’ compensation claims.

An alternative route for workers obliged to work excessively would be to bring a claim under The Fair Labor Standards Act

The Fair Labor Standards Act (FLSA)

This Act is administered by the Department of Labour, Wage and Hour Division who establish minimum wage and overtime rights for most private sector workers. However, Section 7 of the Act merely provides that non-exempt workers should be “compensated for work hours exceeding 40 hours at a rate not less than one and one-half times the regular rate at which he/she is employed”. The FLSA does not impose maximum limits on hours to protect workers against excessive working hours as in the United Kingdom and it ‘exempts’ workers who are often professionals. Because they are not covered by the Act they can be required by employers to work more than their normal or contracted hours without compensation or overtime pay. This is similar to the law in the UK where workers can apply to the employer in writing for exemption from the maximum limit on working hours.

Unfortunately the FLSA does not prohibit dismissal or any other sanction for workers who refuse to work overtime and employers are free to impose non-voluntary overtime upon workers that work beyond 40 hours a week. A serious concern in the US is the amount of ‘mandatory overtime’ imposed on employees. Employers will often make working above the standard working week of 40 hours compulsory with the threat of job loss or other reprisals such as demotion, assignment to unattractive tasks or working weekend or night shifts for non-compliance. ^{xxiv}

There is little an employee can do in these circumstances if they are working under an “employment at-will” contract. As a result of this doctrine utilised by employers in the United States they can dismiss

employees for any reason or for no reason (except for reasons that violate a State's public policy or for reasons that infringe discrimination laws in connection with age, disability, race, colour, religion, sex or national origin). If none of these grounds apply then someone who does not play ball in terms of working overtime can simply be dismissed and replaced with someone who will.

The Occupational Safety and Health Act 1970 (OSH Act)

The US Department of Labor's Occupational Safety and Health Administration (OSHA) administers the Occupational Safety and Health (OSH) Act to regulate safety and health conditions in most private industry workplaces. The mission of the Occupational Safety and Health Administration (OSHA) is to save lives, prevent injuries and protect the health of America's workers. The federal and state governments need to work in partnership to implement and maintain the standards in the Occupational Safety and Health Act of 1970.

Employers covered by this Act must maintain safe and healthy workplaces and comply with the OSH Act's 'General Duty' clause under Section 5. This stipulates that "each employer (1) shall furnish to each of his employees ... a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious harm to his employees, and (2) shall comply with occupational safety and health standards promulgated under this Act".^{xxv} Under the OSH Act employers also have responsibility to keep records of work-related injuries, illnesses and fatalities. Paragraph 1904.4(ix) further stipulates that, "mental illness will not be considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc) stating that the employee has a mental illness that is work-related." Work-related mental illnesses need only be recorded

when they meet the strict criteria outlined in this paragraph.

Under OSHA where compliance needs to be ensured employers can be issued with substantial fines although OSHA have come to recognise that instead of enforcement of the rules companies making successful, efforts at maintaining and improving safety in the workplace should be recognised and rewarded. Organisations that have good safety programs will receive special recognition that will include: the lowest priority for enforcement inspections, the highest priority for assistance and appropriate regulatory relief. Businesses that do not adequately provide for their workers' health and safety, however, will still be subject to strong OSHA enforcement procedures.

It is not clear what impact OSHA and its enforcement agencies have had on workplace stress and death by overwork although the following quote suggests not much. The restriction of application of this measure to private companies employing 10 or more employees severely restricts its application. “The dollar amounts of both federal and state OSHA penalties ... are woefully inadequate even in cases of workplace fatalities. The OSH Act’s criminal penalty provisions are weak and out of date and rarely utilized.”^{xxvi} There will only be criminal enforcement in those cases where there is a wilful violation that results in a worker’s death or where false statements in required reporting are made and the maximum penalty is six months imprisonment.

The Americans with Disabilities Act 1990 (ADA)

Employees who have received benefits or compensation under the workers compensation system are not covered by the Americans with Disabilities Act (ADA) 1990.^{xxvii}

However, employees suffering the adverse affects of overwork may bring a suit under the ADA alleging that the employer has, failed to make a reasonable accommodation in connection with work-related stress or an employee has as a consequence of the employer's behaviour towards him (overworking or bullying) sustained a mental impairment that substantially limits a major life activity.

Definition of Disability

The ADA that was introduced in the US in 1990 was the world's first comprehensive civil right law for people with disabilities.^{xxviii} Title I of the ADA prohibits employers from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.^{xxix} It also provides that employers must make reasonable accommodations for individuals with disabilities who are qualified to perform the job; i.e. an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the job that such an individual holds or desires.

The following quote outlines the basis for the approach of the law under the ADA:

“The ADA premises on the recognition that barriers to full participation in society are socially created, rather than the inevitable consequence of medical impairments, and thus establishes the principle that the inclusion of people with disabilities into all aspects of society and enabling them to participate in the mainstream of American social and economic life is a civil right”.^{xxx}

In this regard, the definition of 'disability' under the workers' compensation law is different from the definition under the ADA because each Act has a different purpose. The former is the law used to provide financial assistance to workers who suffer compensatable work-related injuries and the latter is the law utilised to protect people from discrimination on the ground of disability.

Under the ADA a disability is defined as: ^{xxx}

- (a) a physical or mental impairment that substantially limits one or more of the major life activities of an individual;
- (b) a record of such an impairment; or
- (c) being regarded as having such an impairment.

The functions referred as the major life activities under the ADA are: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Once the plaintiff establishes a prima facie case the burden of proof shifts to the employer (defendant) to show a legitimate business reason for the adverse employment action. ^{xxxii}

Under the ADA, employee may be entitled to remedies and recoveries that include back dated payment, future pecuniary losses, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, punitive damages pursuant to the Civil Right Act of 1991 and equitable relief, such as reinstatement. ^{xxxiii}

Job-related stress under the ADA

Under the ADA workers with psychiatric or mental disabilities are protected from discrimination and the Act defines “mental impairment” to include “any mental or psychological disorder, such as mental retardation, organic brain syndrome, specific learning disabilities, and emotional or mental illness.” Examples are: major depression, bipolar disorder, anxiety disorders, schizophrenia, and personality disorders.^{xxxiv} However, a person suffering from general job related “stress” or from job pressure would not be considered to have an impairment unless as a result of “stress” or “depression” they suffered from a documented physiological or mental disorder that could qualify as a disability.^{xxxv} This requirement applied in the United Kingdom until recently when it was removed from the Disability Discrimination Act 1995. The plaintiff must also show that the impairment substantially limits a major life activity of theirs. Courts have held that inability to tolerate stressful situations at work is not a disability within the meaning of the ADA.^{xxxvi} Also the inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working as defined under the ADA.^{xxxvii} This is similar to the approach of the courts in the United Kingdom under the Disability Discrimination Act 1995 where they will not accept that normal day to day activities (the equivalent measure) relates to activities in a particular job but rather the activities should apply to the public at large.

The ADA protects “qualifying” individuals who can perform the essential function of the job, with or without reasonable accommodation; i.e. employee needs to prove that he/she is ‘disabled’ but not so ‘disabled’ to be unqualified to perform the job. This is because the ADA is a civil rights law that protects individuals from structural and attitudinal discrimination in society which hinders them from participating in social and economic life. If the overwork or stress led to someone suffering from cancer or a stroke or a mental impairment and they could still perform the job with a reasonable accommodation then they will

be protected but so would workers who suffered from these problems but were not caused by overwork or undue stress.

Equal Employment Opportunity Commission (EEOC)

The Equal Employment Opportunity Commission (EEOC) was created by Congress in 1964 and enforces the principal federal statutes protecting employees from discrimination^{xxxviii} such as Title I of the ADA and Title VII of the Civil Rights Act of 1964. The latter statute makes it unlawful for employers to discriminate on the basis of race, colour, sex, pregnancy, or national origin^{xxxix} in hiring, discharging, compensation, or violating terms and conditions of employment. The EEOC will undertake an investigation on an employee's behalf to prove whether their rights were violated. The remedies available for a "found discrimination" include compensation and punitive damages such as back pay, reinstatement, hiring and promotion, or payment of attorney's fees, and court costs. Furthermore, individuals can turn down a settlement obtained by the EEOC if they wish and pursue a civil action against their employer.

In *Jamison v. Storer Broadcasting Company*^{xl} an action for damages was taken against an employer for the alleged discriminatory discharge of his employee and for his death by suicide caused by the discriminatory discharge. The plaintiff complained that her husband, a Caucasian television sports presenter, was racially discriminated against when he was dismissed and replaced by a black male sports presenter as part of the station's affirmative action programme. As a result of this he suffered from a mental illness that led to his wrongful death by suicide. The court however stated that the plaintiff had failed to show the causation between the discriminatory discharge and the suicide. "To permit liability for a suicide to attach merely because one event triggered other experiences in life which combined to create an unbearable circumstances or increasingly unbearable life for the decedent would be to extend the concept of causation beyond manageable bound" However, the action for the discriminatory discharge

was upheld. This was despite the defendant's motive for discriminating against the decedent being furtherance of an affirmative action programme.

This case illustrates that the scope for pursuing an action in tort for stress related suicide is unlikely to succeed because of the need to establish a strong causal link between factor/s leading to stress related illness and death by suicide. In the United Kingdom the House of Lords have recently decided in the *Corr* case (considered below) that provided mental illness or psychiatric impairment is a foreseeable outcome of stress or overwork then it is not necessary to show that a suicide resulting from the mental illness is also foreseeable.

Worker's Compensation

This is by far the most common route taken by workers and dependents of deceased workers to seek compensation for occupational stress and death by overwork in the US.

Prior to the enactment of the Workers' Compensation Laws (WCL) in 1914, the only remedy available for injured workers was to take an action for negligence under tort against employers. However, employers could contest the claims on the basis that the workers understood and accepted the risk involved in the employment or the injury was caused by the worker's own negligence or the negligence of a fellow worker.^{xli}

The majority of US States now insist that employers obtain workers' compensation insurance to cover claims from injured workers. A state agency, the Workers' Compensation Board, normally processes the claims and determines whether a worker will receive compensation and if so the level of compensation. It operates on the basis that the employer must compensate the employee when they are responsible for the injury and they are strictly liable for the harm.

“The worker’s compensation statute provides strict liability by requiring employers to compensate employees for injuries arising out of and in the course of employment, regardless of the fault or negligence of the employer, and regardless of the presence or absence of contributory negligence on the part of employee”.^{xliii}

The workers’ compensation system was established as an “exclusive remedy” and accordingly workers waive the right to bring civil claims against their employers in exchange for the right to receive compensation benefits (e.g. medical care and payment for injuries).^{xliiii} There are however exceptions to this rule of exclusive remedy.^{xliiv}

In most States, an employer cannot terminate the employment of an employee for filing a workers’ compensation claim after suffering from work related injury.^{xliv}

The strict liability inherent in these schemes lends itself to claims of death by overwork or death by suicide. The danger is that the courts might view deaths as accidental and caused by the wilful intent of the injured employee which is a valid exception.

Causality for Compensation

Mental or physical injury or mental disability caused by work related stress or pressure can be covered by the Workers’ Compensation, however, “workers are not compensated for the condition of the workplace but for the loss of earning capacity suffered as a result of a particular disability”.^{xlvi}

Due to the subjective nature of mental injury claims it is crucial to establish the causality between work conditions and the injury and that the cause of the injury arises out of and in the course of employment. The scope of the coverage of the Workers’ Compensation varies between States but they are mainly

categorised into three types: ^{xlvii} *Physical-mental claim*: physical injury or disability resulting in a mental condition, *Mental-physical claim* which is a mental stimulus resulting in a physical condition. This type also includes chronic stress claim for injuries caused by factors acting over time, such as heart attack as a result of occupational stress. ^{xlviii} Finally *Mental-mental claim* which is where a mental stimulus leads to a mental condition. This type can be further subdivided into Traumatic Stress claim (i.e. psychological injuries caused by a specific disturbing event or series of events) and Chronic Stress claim (i.e. psychological injuries caused by mental stimuli acting over time).

A variety of approaches to stress claims have been adopted in the different jurisdictions within the United States and these are categorised as follows: ^{xlix}

1. Mental-mental claims are generally upheld in the states such as: California, Delaware, Hawaii, Maryland, Massachusetts and New Jersey.
2. Mental-mental claims are only upheld if the stressors are unusual (i.e. source of stress is greater than everyday life stress or exceeds that of ordinary employment), such as in the states of Alaska, Colorado, Illinois, New Mexico and Pennsylvania.
3. Mental-mental claims are upheld only if the stressors are sudden/traumatic in the states of Louisiana, Texas and Utah.
4. Mental-mental claims are never compensatable without physical injury in Alabama, Connecticut, Minnesota, Ohio, Oklahoma and Virginia.

Additionally causation can also be determined with subjective or objective standards in order to decide if a claim can be upheld. A strictly subjective causal nexus standard can be used if it is factually established that the claimant honestly perceived some event that occurred during the ordinary work of his employment had caused his disease.¹ Here, the actual condition of work is viewed objectively and

causation can be established by objective medical evidence or proof of objective stress factors in the job. The work or working condition producing the mental disability must be extraordinary and it must exist in reality and be a major contributor to the cause of the mental disorder.^{li}

In *Young v. Workers' Compensation Appeal Board (New Sewickley Police Department)*^{lii} it proved more difficult to establish that abnormal working conditions in the job were inherently highly stressful.

The claimant experienced the first standoff event that was the most perilous position he had ever been placed over the course of his twenty years career as a police officer, and subsequently claimed that he had suffered a work-related psychological injury that resulted in post-traumatic stress disorder. The court however held that “the claimant failed to establish that the standoff event was an abnormal working condition for a police officer, where certain stressful and even life-threatening events and occurrences are inherently expected and anticipated and the fact that he had never before been involved in standoff merely made the experience subjectively abnormal for the claimant.”

The plaintiff Young was unsuccessful in his mental-mental claim for compensation as it did not meet the ‘abnormal working condition’ test as the very nature of the job of police officer is highly stressful. In the United Kingdom a similar approach would be taken to emergency service workers trying to claim compensation for post traumatic stress disorder suffered in the context of their work.

However, in the State of Minnesota the physical and emotional stress associated with a fire-fighter’s job was deemed inherently stressful and contributed to the development of the claimant’s coronary artery disease. Thus, an employee can be successful for the mental-physical claim if the causation is legally established because the stress was extreme or beyond the ordinary day-to-day stress to which all employees are exposed.^{liii}

Death by Overwork or Exhaustion

Many states impose restrictions on the criteria needed to establish a claim, such as ‘the mental stress claim must accompany physical injuries’ or ‘disability must result from sudden or extreme mental stress.’ These restrictions are to curb the rapid influx of claims under the States’ workers’ compensation systems.^{liv} This latter criterion may mean obtaining compensation is difficult to obtain even where workers suffered a disabling physical injury or where death resulted from a gradual build-up of stress and tension through overwork. Nevertheless, it is crucial to establish that a claimant was subjected to extreme stresses and strains of the job, which were more than the routine stresses of employment suffered by workers in that job.^{lv}

In New York, like most other states, the compensability of stress injuries that possess a physical component has become well established.^{lvi} Especially, since the case of *Klimas v. Trans Caribbean Airways* (1961)^{lvii} that dealt with a employee suffering a heart attack due to stress. The court found that stress, anxiety and worry associated with employment constituted an accidental injury justifying an award of compensation because stress can cause physical deterioration.^{lviii} The court also stated that the determining factor of an industrial accident is “by the common-sense viewpoint of the average man”.

In addition, New York State’s workers’ compensation law stipulates that decedent’s statements are admissible if corroborated by “circumstances of other evidence” (Section 118).^{lix} Furthermore an accidental injury need not have been caused by a discrete, trauma but may occur as the result of prolonged, unusual circumstance.^{lx} In *Kavanaugh v. Empire Mutual Insurance Group et al* an employer unsuccessfully appealed against a decision of the Workers’ Compensation Board to award death benefits to a widow whose husband suddenly collapsed at work and sustained a cardiac-related death precipitated by the stress at work caused in part by his regularly working overtime. In this instant case, the decedent

apparently told his wife the claimant that his superiors were pressuring him to perform overtime and that he was concerned about losing his job.

In the State of Connecticut the Supreme Court reviewed the position of their State's jurisdictional boundaries as to whether a judge of the Supreme Court was an "employee" for the purpose of entitlement to workers' compensation in *Kinney v. State of Connecticut* (1989).^{lxi}

Unusual work pressure and excessive workload was imposed on this judge resulting in chronic stress that contributed to the development of his coronary artery disease, exacerbating his pre-existing myocardial atherosclerosis and consequently leading to his death from myocardial infarction in 1986. His wife filed a workers' compensation claim alleging that his death arose out of and in the course of employment; however, the Supreme Court held that a judge of the Superior Court was not an "employee" for purposes of entitlement to workers' compensation.

Suicide by Overwork or Work Pressure

Workers' compensation law precludes compensation where the injury or death was caused by 'wilful intention'. However, if a work-related injury causes 'insanity', 'brain derangement' or a 'pattern of mental deterioration', which in turn causes suicide^{lxii} and if these are proximately caused by a compensable injury and the injury has arisen 'out of and in the course of' employment, death benefits for the suicide may be awarded. This is similar to the approach taken by the British courts where, if it is established that psychiatric illness of an employee is a foreseeable consequence of stress at work then it is not also necessary to show that suicide resulting from this illness to be a foreseeable outcome.^{lxiii}

On the other hand, "if the suicide results from a voluntary wilful choice determined by a moderately intelligent mental power which knows the purpose and physical effect of the suicide act, even if the choice is influenced by a disordered mind, this breaks the chain of causation arising from the injury"^{lxiv}

and no death benefits may be awarded under the WCL. This is the essence of the “Sponatski rule”^{lxv} (or “purpose and effect” test). This rule is one of three tests adopted in the US to be applied to the cases in establishing the causality between work-related stress and workers’ suicide or attempted suicide, which determines the eligibility for death benefits under the WCL. Other tests are the “chain-of-causation” rule, which is the mainstream rule, and the “New York” (or Delinousha rule), which is modified version of the “chain-of-causation” rule.

It is important to analyse each of these tests to appreciate the approach of the courts in the US to this issue.

The “Sponatski” rule

This rule is considered to be the harshest of the three tests and the number of States adhering to this rule has diminished from eleven to five; Iowa, Minnesota, Missouri, Texas and Washington, although Minnesota is in practice following the “chain-of-causation” rule. Under this rule suicide is only compensatable if: as the result of a physical injury the worker was possessed of an uncontrollable impulse to commit suicide or was in a delirium of frenzy but did not consciously intend to kill himself and did not realise the consequence of his/her act of self-destruction.. In *Thomas v. City of Springfield (Missouri)*^{lxvi} the plaintiff unsuccessfully appealed from the decision of the Missouri Labour and Industrial Relations Commission to deny him compensation benefits for an injury sustained during his employment as a police officer. He was assigned two full-time jobs which greatly intensified his workload and he made an attempt to commit suicide by shooting himself in the heart and consequently became totally and permanently disabled. He claimed that due to performing his extraordinary and unusually stressful job duties he suffered a mental injury that led to his physical injury.

An ‘intentional self-inflicted injury’ is the key feature in the “Sponatski” test and in this regard separates it from the other tests. In the Thomas case, the plaintiff admitted that the injury he sustained from his suicide attempt was self-inflicted however whether his act was ‘intentional’ or not became the focus of the argument. The court however embraced the narrow “purpose and effect” test which is “self-destruction is never prompted by a normal mind, yet if done with sufficient mental power to know the purpose and effect of the act, even though dominated by a disordered mind, it is intentional suicide.” The court held that Mr Thomas met the low threshold for meeting the “purpose and effect” test for defining an intentional act under the Workers Compensation Law, thus his mental injury was not compensatable.^{lxvii}

The “chain of causation” rule

This rule stipulated that suicide is compensatable if the injury produced mental derangement and this led to suicide and it has also adopted a narrower interpretation of the term ‘intentional’. In *Stroer v. Georgia Pacific Corporation* (Oklahoma, 1983)^{lxviii} an employee’s widow successfully appealed against a lower court’s decision to bar death benefits for her husband’s suicide which occurred after his suffering work-related injury. This rule was articulated in detail and stipulates that: “[A]n employee’s death by suicide is compensable if the original work-related injuries result in the employee’s becoming dominated by a disturbance of mind directly caused by his/her injury and its consequences, such as extreme pain and despair, of such severity to override normal or rational judgment. The act of suicide is not an intervening cause of death and the chain of causation is not broken in cases where the incontrovertible evidence reflects that, but for the injury, there would have been no suicide. A suicide committed under these circumstances cannot be held to be intentional even though the act itself may be volitional.”

The “chain of causation” rule was also applied to *Friedman v. NBC Inc. etc* (New York, 1991).^{lxix} The extraordinary work-related stress suffered by Mr Friedman was a direct cause of his depressed state that brought about his death by suicide. Mr Friedman was employed by NBC as a manager of film and tape coordination in its engineering department and suffered from a depressive condition as a result of constant work-related pressure. The Supreme Court upheld the decision of the New York State Workers’ Compensation Board to award compensation to his widow and rejected an appeal from the employer who argued that Mr Friedman’s death was caused by his wilful intention. This is the test which most favours the plaintiff and recognises that a chain of causation exists between the illness (physical or mental) of a worker caused by overwork and/or stress and their suicide.

The “New York” rule

Although not applied in the Friedman case the courts in the State of New York have a modified and stricter version of the “chain-of-causation” rule with the added requirement of producing evidence of some physical damage to the brain. The compensation for the work-related death by suicide may only be awarded “if suicide following injury is not the result of discouragement, of melancholy or of other same conditions but of brain derangement caused by the accident.”^{lxx} However, in a number of cases where this rule has been applied by the State courts there has been a successful outcome of damages claims for the plaintiffs.

In the State of Arizona, “mental injury, illness or condition” is not considered a personal injury by accident arising out of and in the course of employment and is not compensatable unless some “unexpected, unusual or extraordinary stress” related to the employment or some physical injury related to the employment was a substantial contributing cause of the mental state.^{lxxi}

Despite this in, *Findley v The Industrial Commission of Arizona*,^{lxxii} the widow of a brick company manager successfully established that her husband's suicide was substantially contributed to by his mental imbalance caused by the unexpected, unusual and extraordinary level of work-related stress.^{lxxiii}

The State of Louisiana requires the same criteria for compensability as the State of Arizona however, with the requirement for 'clear and convincing evidence'. In *Perniciaro v. Martin Marietta Corporation* (1993)^{lxxiv} the plaintiffs were the widow and son of a worker. They unsuccessfully appealed against the decision that denied them compensation under a claim for death benefit. The plaintiffs alleged that Mr Perniciaro's suicide was a result of a mental illness produced by work-related stress. The court held that the plaintiffs had failed to prove that the decedent had suffered a mental injury that caused him to become so mentally impaired that he did not have capacity to form a conscious volition to end his life. Also his stress was not deemed to be 'extraordinary' as other members of the team also worked just as much as Mr Perniciaro and had not suffered from undue levels of stress or committed suicide. This decision fails to recognise the subjective effect of stress on workers where some workers can cope with it much better than others.

United Kingdom - The Legal Framework

Background

In the UK certain employers because of market pressures such as increased price competition have downsized their operations and consequently reduced their staff. The remaining staff are then, often required to compensate for this reduction by working more hours and being more productive. These employers tend to attach greater importance to the finance function that focuses on shareholders' interests and improved share prices ("the primacy of short-term financial performance as the measure of organisational success")^{lxxv} than the welfare and health of their staff. Such short-terminism has produced a much more precarious employment scene and instilled fear of job insecurity among British workers which is exacerbated by the growing culture of "presenteeism."

With the present credit crunch in the UK these problems will undoubtedly be exacerbated.

Recent research has shown that more than half of the UK's white-collar employees, equivalent to 8.7 million people, work long hours, even when they are ill and highlighted that "presenteeism" is becoming endemic.^{lxxvi} The Trade Unions Congress in 2001 found that British workers worked an average of 43.6 hours per week considerably more than the European Union average of 40.3 hours and they topped the European long hours league.^{lxxvii} In 2005 it was reported that one in six of all workers in the United Kingdom were working more than 60 hours per week. Only 44% of workers used up their full annual leave entitlement due to a heavy workload or fear of upsetting their boss. Also 65% of workers were taking on average only twenty seven minutes lunch break whilst working at their workstation.^{lxxviii}

In 2005/06 a survey conducted by the Health and Safety Executive estimated that work-related stress, depression or anxiety affected 420,000 workers in the UK resulting in an estimated 10.5 million lost

working days.^{lxxix} The survey also found that: higher workloads, tighter work deadlines, lack of support at work and physical attack or threat of attack at work were contributing factors to stress related illness and related conditions.

People react differently to overwork and stress. While some people may take it in their stride others will suffer physically or psychologically as a consequence of it. Partly because of this it has been difficult to set down standards in respect of the employer's legal responsibility for stress.

A further study in 2007 carried out amongst almost 1,000 32-year-olds found 45 per cent of new cases of depression and anxiety were attributable to stressful work. The researchers defined a highly demanding job as involving a lack of control, long hours, non-negotiable deadlines and a high volume of work.^{lxxx}

Legal Rules

The legal rules in the United Kingdom impinging on stress related illness are derived both from statute and the common law and are wide ranging. What follows is an overview of the relevant legal rules and some analysis of their effectiveness in dealing with stress related illness and death by overwork.

Working Time Regulations 1998

The current Labour Government introduced the Working Time Regulations (WTR) into UK Law in 1998 to act in compliance with the EC Working Time Directive 1993/104.

These Regulations attempt to deal with the problems of overwork and excessive working hours by amongst other things limiting the average working week for workers to 48 hours.

However, the evidence cited above confirms that the WTR is not capable of comprehensively tackling the British entrenched culture of working long hours.^{lxxxii} Unfortunately the provision that allows ‘individual opt-out’ from the application of these rules has legitimised workers working more than a 48 hour week. The Working Time Directive also provided that workers are entitled to at least 11 consecutive hours’ rest in any 24-hour period (Article 3) and at least 24 hours’ continuous rest per seven-day period (Article 5). The WTR imposes a contractual obligation on an employer not to require an employee to work more than an average of 48 hours per week during the reference period of 17-weeks. (Regulation 4(1)).

In *Hone v Six Continents Retails Ltd*^{lxxxiii} the claimant, employed as a Licensed House Manager, complained that his workload was excessive and that this eventually caused him to suffer stress and psychiatric injury. He had complained about working approximately 90 hours per week and of being tired and he had asked his employer for an assistant to no avail. The Court of Appeal found that the long hours the claimant worked was in breach of the WTR i.e. in the absence of the claimant’s opt-out agreement the defendant had failed in his duty to take all reasonable steps to ensure that he did not work more than an average of 48 hours a week.^{lxxxiii}

As well as their duties in respect of working time employers also have a duty under statute^{lxxxiv} to ensure the health, safety and welfare of all their employees and under the common-law to exercise a ‘duty of care’ in respect of their employees (see below).

Contractual Position

There is an implied term in every employee’s contract that employers will take reasonable care for their health and safety. Where there is a failure in this respect it could lead to a claim for breach of contract or represent the basis for a statutory claim such as constructive dismissal. In *Johnstone v Bloomsbury Health Authority* (1991)^{lxxxv} the plaintiff, a senior house officer in University College Hospital, claimed that the employers were under a duty to take all reasonable care for his safety and well-being and that they were in breach of that duty by requiring him to work intolerable hours with such deprivation of sleep as to damage his health and put at risk the safety of his patients. His contract of employment stated that he had a standard working week of 40 hours and, in addition, would be available on call for a further 48 hours a week on average. He alleged that he was required in some weeks to work in excess of 100 hours and as a result suffered from stress, depression, lethargy, diminished appetite, inability to sleep, exhaustion and suicidal feelings. It was held that the employers could not lawfully require the plaintiff to work so much overtime in any week as it was reasonably foreseeable would damage his health, thus the implied term extending to the employer the duty to safeguard employee’s health and safety overrode the express terms of his contract of employment.

Tort of Negligence

In order to establish employer's liability for the tort of negligence in respect of stress related illness the following elements must be present: (1) A duty of care (2) Breach of that duty (3) Causality between the defendant's conduct and the damage suffered (4) Damage must be reasonably foreseeable

“The most high profile cases revolve around employer's liability in the tort of negligence for psychiatric illnesses suffered by employees, with the courts focusing particularly on the issue of foreseeability”.^{lxxxvi}

In *Walker v Northumberland County Council*^{lxxxvii} the High Court held that an employer was liable for negligently causing an employee to experience a nervous breakdown brought on by the cumulative effect of his long-term exposure to a stressful workload and working condition. The plaintiff, a senior social worker, was awarded £175,000 in compensation. The High Court held that he was exposed in his job to a reasonably foreseeable risk to his mental health and effective action taken to reduce his workload could have prevented his second nervous breakdown and the employer had failed in his duty to provide his employee with a reasonable safe system of work.

Following the Walker's case other work-related stress claims were pursued successfully. However, in *Sutherland v Hatton* (2002)^{lxxxviii} the Court of Appeal laid down 16 practical propositions for determining employer liability for psychiatric illness caused by work-related stress. The threshold factor was reasonable foreseeability that depends on what the employer knows or ought to know about the individual employee, and their stress-related symptoms or illness originating from his work. It must be plain enough for any reasonable employer to realise that there are some steps which he could or should have taken before finding him in breach of his duty of care. Nevertheless by its very nature, a psychiatric disorder is harder to foresee than physical injury and as such, it is implied that “an employer is usually entitled to assume that the employee can withstand the normal pressure of the job unless he knows of some particular problems or vulnerability.” This imposes an onus on employees to keep their employer

informed of their medical condition however this was an important change in the criteria for determining the employer's liability in stress-related claims. The court upheld the employer's appeal finding that Mrs Hatton's illness was not reasonably foreseeable as she never complained of her workload, which was no greater than other teachers. In the joint appeal by employers, the guidance set out by *Sutherland v Hatton* was also affirmed in *Barber v Somerset County Council* (2002), however the judgment of Court of Appeal in *Barber* was later reversed by the House of Lord in 2004.^{lxxxix} They held that the employer had a duty to be pro-active in looking out for signs of stress in their employees and to take initiatives to implement protective measures that would alleviate work-related stress.

The *Barber* judgment has not substantially affected the *Sutherland* guidelines and these guidelines "still remains good law" and have been applied to further cases.^{xc}

The Scottish judiciary have applied the guidelines in work-related stress cases but have adopted a rather restrictive interpretation of the delict of negligence compared to the judiciary in England and Wales. This has resulted in limited opportunity for employees to obtain redress for stress related injury through pursuing delictual actions in Scotland.^{xcii}

There have been very few successful claims for work-related stress damages in Scotland mainly due to the requirement of the courts that the pursuer must establish foreseeability of psychiatric illness on the part of the employer. This would normally consist of the employee bringing the details of their illness to the attention of the employer and the illness would need to be one that is recognized under the major classification of mental illnesses.^{xciii}

Death by Suicide - The Scottish Position

The leading case in Scotland on death by suicide in the workplace is *Cross v Highlands and Islands Enterprise*^{xciii} where an employee committed suicide after suffering from depression allegedly brought on by stress at work. His widow sued Highlands and Islands Enterprise (HIE) and Western Isles Local

Enterprise Company (WIE) (where he was seconded to) for damages for negligence at common law and breach of statutory duty under the Management of Health and Safety at Work Regulations 1992. She alleged that it was HIE's duty to take reasonable care for the safety of their employees including the deceased and to take reasonable care to provide him with a reasonably safe system of work, and that WIE owed to Mr Cross as their employee a duty to take reasonable care not to expose him to working conditions that were reasonably foreseeable to cause damage to his mental health.

Mr Cross was appointed as a Senior Training Manager of WIE by way of secondment from HIE in April 1991. He first went to see his GP in April 1993 and complained that he had feelings of inability to cope with his job, anxiety about his future, difficulty in concentrating and sleep disturbance. He attributed his anxiety to work-related problems, and mentioned having too great a workload, lack of assistance and inadequate availability of secretarial help. His GP however found no evidence of underlying depression and no suicidal intent, and diagnosed 'stress'. Lord MacFadyen was of the opinion that it had not been proved that the initiative cause of the depressive illness from which Mr Cross was suffering between April and August 1993 was stress arising from his work even if Mr Cross himself perceived that the source of his depression lay in difficulties at work. However, he also stated: ^{xciv} "it cannot be said that liability in respect of psychiatric injury can arise only where that injury takes the form of nervous shock, i.e. a sudden assault on the nervous system. Lord MadFadyen in Cross held that certifying someone as unfit for work on account of 'stress' does not constitute an unequivocal diagnosis of psychiatric illness. Stress may cause psychiatric illness but it's not itself an illness. Furthermore the employer in this case had no clear information identifying: the nature of Mr Cross's illness; the severity of the condition and that the job was objectively likely to be harmful to his mental health.

It was not in his view the employer's duty to go looking for difficulties in Mr Cross's working conditions that were not identified to them at the time as having a bearing on his illness although a reasonable

employer would find out what Mr Cross perceived to be the pressure at work that had precipitated his illness and to apply their mind to those factors in order to improve the situation.

Lord MacFadyen concluded that although HIE were under a duty to take reasonable care not to expose him to working conditions which were reasonably foreseeable to subject him to such stress as to be likely to cause him psychiatric injury, the claimant failed to prove HIE's breach of that duty under the law of negligence..

Lord MacFadyen also acknowledged the pursuer's claim made under Section 1 and 10 of the Damages (Scotland) Act 1976 which provides: Where a person dies in consequences of personal injuries sustained by him as a result of an act or omission of another person, being an act or omission giving rise to liability to pay damages to the injured person or his executor, then, subject to the following provisions of this Act, the person liable to pay those damages (in this section referred to as 'the responsible person') shall also be liable to pay damages in accordance with this section to any relative of the deceased (Section 1.1).^{xcv}

The court first clarified that the onus of proof of causality between the wrongful act or omission and the harm suffered, on the balance of probabilities, rests upon the pursuers, however it is not necessary to show that negligence or breach of duty is the sole cause of the harm but sufficient to show that it made a material contribution to such causation.^{xcvi} Lord MacFadyen held that in this instant case negligence and breach of statutory duty were not proved, thus the issue of a causal connection between the alleged negligence and Mr Cross's suicide did not arise.

In the Cross case a major hurdle for the executors of the deceased employee claiming damages for psychiatric injury due to work-related stress was foreseeability of his suffering psychiatric harm. Had this been established the deceased's employers would have been liable not only for the reasonably foreseeable psychiatric injury but for his suicide.^{xcvii}

Under the “thin skull” rule in tort/delict a plaintiff takes his victim as he finds him however, Lord MacFadyen in Cross held that although previous authorities had primarily referred to this rule in respect of ‘physical injuries’ it made no material difference to him in applying this to psychiatric injury.

Death by Suicide - The English Position

The question is whether the compensatable consequence of psychiatric injury includes suicide and this was the point discussed extensively in *Corr v IBC Vehicles Ltd.*

A negligence claim based on suicide as a result of psychiatric injury arising from work-related stress had never been successful until this decision where the court held that an employer can be liable for suicide if it originated from work-related physical injuries.

In *Corr v IBC Vehicles*^{xcviii} the widow of a maintenance engineer who committed suicide when severely depressed as a result of work-related accident brought a negligence claim against the employer for damages in relation to her husband’s psychiatric and physical injuries that flowed from the accident, as well as a claim under the Section 1 of the Fatal Accident Act 1976 for damages for the losses of financial support arising from her husband’s death. The employer contested this duty of care arguing it did not extend to protecting his employee’s suicide, which broke the chain of causation. Also his suicide was not reasonably foreseeable. The Court of Appeal however established a duty of care and causation between the employer’s negligence and the damage suffered and held^{xcix} that ‘it was not necessary to establish that the employee’s suicide was reasonably foreseeable, but only that the kind of harm that he suffered – in this case, psychiatric injury (i.e. severe depression) – was foreseeable, and that it was the injury that drove him to take his life’. The Court also heard evidence that 10% – 17% of sufferers of severe

depression kill themselves. It then followed that the employer was liable not only for the deceased's post-accident depression but also for his suicide as there was a clear sequence between the physical injuries, the post-traumatic stress disorder, the depression and his suicide.^c

The Court in *Corr* confirmed that the law of negligence no longer draws any distinction, for purposes of foreseeability and causation between physical and psychological injury and that if depression is foreseeable from the physical injury, it is difficult to conclude that suicide as a result of that depression is not foreseeable and accordingly an employer must take his victim as he finds him. Applying these dicta to *Cross* case earlier, if it had been proved that exacerbation of Mr Cross's depression was caused by wrongful act or omissions on the part of the defenders, which led him to his suicide, the pursuer could have been entitled to recover damages in respect of his suicide even if his suicide was not reasonably foreseeable as a likely consequence of their negligence.^{ci}

The *Corr* case went on appeal to the House of Lords^{cii} and the appeal was dismissed on the basis that the employer owed the employee a duty to avoid causing him psychological as well as physical injury and its breach caused him injury on both counts.

The case was taken on appeal to the House of Lords^{ciii} by the employer and Lord Justice Bingham provided the leading judgement and dismissed the appeal. He expressed his conclusions in paragraphs 82 & 83 as follows:

“To cut the chain of causation here and treat Mr *Corr* as responsible for his own death would be to make an unjustified exception to contemporary principles of causation...

Today we are able to accept that people to whom this happens do not forfeit the regard of society or the ordinary protections of the law. Once it is accepted that suicide by itself does not place a clinically depressed individual beyond the pale of the law of negligence, the relationship of his eventual suicide to his depression becomes a pure question of

fact...Once liability has been established for the depression, the question in each case is whether it has been shown that it was the depression which drove the deceased to take his own life. On the evidence in the present case, it clearly was.”

It was held the employee, at the time of his death, was not insane, nor was he fully responsible and he had acted in a way that he would not have done but for the injury his employer’s breach caused him to suffer. That being the case, his taking of his own life, could not be said to fall outside the scope of the duty which his employer owed him.

It was held that “depression, possibly very severe, was a foreseeable consequence of his breach. It was not incumbent on the plaintiff to show that suicide itself was foreseeable.”

Further, in the circumstances suicide was reasonably foreseeable by his employer considering the possible effect of a serious workplace accident on a hypothetical employee. ^{civ} While the facts of this case were slightly unusual in that the medical problems suffered were caused by a physical accident at work but this is not a necessary element of the case and provided a duty of care has been breached in respect of the mental wellbeing of an employee the employer will be liable for that and any subsequent suicide.

There are various statutory claims that can be brought by victims of stress related illness or death (including suicide) which provide civil remedies to the victims or their executors and the more significant of these will be considered briefly here.

The Disability Discrimination Act 1995 (DDA)

The DDA 1995 prohibits discriminations in recruitment, promotion, training, working conditions, and dismissal for a reason of a person's disability as unlawful acts and stipulates the duty for employers to make a reasonable adjustment to accommodate employees and job applicants if an employer's provision, criterion or practice or the physical features of its premises place the disabled person at a substantial disadvantage in comparison with persons who are not disabled. In order to make a claim under the DDA, a person must prove that he or she has a disability within the meaning of the DDA; i.e. if he or she has a physical or mental impairment, which has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities. In *Osborne-Clarke v Commissioners of Inland Revenue ET*^{cv}, an employee who became profoundly deaf at birth and had difficulty reading complex documents, was deeply affected by the disciplinary proceedings and had expressed concern as to what would happen to him and his family if he lost his job. The employee subsequently committed suicide. The tribunal upheld the employee's widow's claim of disability discrimination (i.e. failure to halt the disciplinary proceedings), finding that 'the suicide demonstrates the intensity of the injury to feelings'. The tribunal concluded that this case fell on the borderline of the middle and top band of compensation as per Vento guideline for injury to feelings in respect of unlawful discrimination and awarded £15,000 to the widow. While statute gives tribunals the power to award such compensation for injury to feelings in discrimination case, the House of Lords held in 2004 that an Employment Tribunal has no power to award compensation for non-pecuniary loss in an unfair dismissal case.^{cvi}

The DDA previously required for mental illness to be clinically well recognised in order for it to be regarded as a mental impairment for the purpose of the DDA, thus in the past the EAT held that stress did not in itself constitute a disability. The DDA 2005 that came into force on 5 December 2005 however, broadened the definition of disability by removing this requirement. Those suffering from stress and feeling that they have received unfavourable treatment because of it are no longer prevented from seeking

redress under the disability discrimination legislation. Provided it has led them to suffer physical or mental illness which is long term ^{cvii} and has had a substantial and adverse effect on their ability to carry out day to day activities. While the burden of proof here is not insubstantial medical conditions such as cancer, strokes, severe depression etc. would clearly qualify.

Corporate Manslaughter and Corporate Homicide Act 2007

Another development that will impact on future stress cases in UK is the introduction of the Corporate Manslaughter (for England) and Corporate Homicide (for Scotland) Act in 2007. Under the Act organisations can be guilty of the new offence of corporate manslaughter if the way their activities are organised or managed by senior managers causes a person's death through a gross breach of duty of care owed to that person. Senior managers are defined as those who 'play a significant role in decision making about how the whole or a substantial part of the organisation's activities are managed or organised. The duty of care in question must relate to the common law duty that the organisation owes under the law of negligence.^{cviii} It must also be established that the breach directly caused the death and the breach was so great as to be classified as gross negligence – i.e. 'the conduct is such that it falls far below what can reasonably be expected of the organisation in the circumstances. Also that the organisation failed to comply with health and safety legislation relating to the breach of duty. Furthermore the law does not affect provisions such the Health and Safety at Work Act etc 1974 and accordingly the organisation can be prosecuted for corporate manslaughter as well as under general health and safety legislation. The maximum fine is an unlimited fine and individuals can also be charged with gross negligence manslaughter under the legislation and if successfully prosecuted can face a maximum penalty of life imprisonment.^{cix}

From April 2008 an employer can therefore be guilty of the corporate manslaughter offence if it is established there are unwritten rules that condone non-compliance or such non-compliance is common practice and expected by the organisation. In principle an employer can be liable for an employee's death

as a result of heart failure or suicide where is the result of depression brought on by excessive hours of overtime or excessive demand placed upon them.

Under the Corporate Manslaughter and Corporate Homicide Act the court would have to consider whether senior management's failure in the way their organisation's activities were managed and organised had caused the death of their employee that would constitute the gross breach of duty of care.

Human Rights

In October 2000 the UK incorporated the European Convention of Human Rights (ECHR) into its own legislation by means of the Human Rights Act 1998, making it unlawful for a public body to act in a way that is incompatible with Convention rights and accordingly such an act could give rise to an action under criminal or civil law. This route is not available for private sector workers however they can rely on Section 3 of the HRA places a statutory duty on employment tribunals and the courts to interpret domestic legislation in a way that gives effect to Conventions rights.^{cx}

The majority of employment cases brought under the HRA have related to Article 6 (Right to a fair trial) and Article 8 (Protection of private and family life). There have been no occupational stress cases brought under the Convention however; Article 2 (Right to life) and Article 14 (Prohibiting discrimination in enjoyment of any Convention right) can have a bearing on cases of work-related death or suicide as a result of overwork. The justification for this is provided by Andrew Dismore MP who noted the following in a debate on what was then the Corporate Manslaughter and Corporate Homicide Bill on 4 December 2006: ^{cx}

“The Human Rights Committee said that it could lead to our being in breach of article 14 of the European Convention of Human Rights, when applied in conjunction with the right to life in article 2, because of the discrimination within the system whereby if one person was killed an offence would be committed, but if another person was killed in identical circumstances an offence would not be committed simply because one happened to be killed by a company... That cannot be right.”

Furthermore, Article 3 (Prohibition of torture, inhuman or degrading treatment), Article 4 (Prohibition of slavery and forced labour), and Article 8 (Right to respect for private and family life) can have bearing on occupational stress related illness, for example, as a result of excessive workload or bullying due to homosexuality in armed forces. ^{cxii}. Article 10 (Freedom of Expression) stipulates the right to impart

information and ideas in the interests of public safety, for the protection of health or morals and for the protection of rights of others.

Conclusion

The cost of employer's failure in dealing with occupational stress in both jurisdictions is not limited to the damages they will have to pay when their employee's case against them is successful or the consequences of a possible criminal prosecution. It also extends to the cost of legal fees and opportunity costs associated with the legal process, occupational sick pay and ill health pension, damage to reputation and bad publicity to the company resulting in loss of future business opportunity and finally its negative impact on attracting and retaining staff.

In the United States when employees suffer from work related stress that results in mental illness or suicide due to excessive workload, work pressure or hostile working environment, the common remedy available to them is to seek compensation under the workers' compensation law for loss of earning power and the ability to work. However the law does not provide compensation for the conditions of the workplace, for pain and suffering or lost wages as part of the damages that can be recovered unlike damages available through tort or civil action. It imposes strict no-fault liability on employers for work-related injuries in exchange for immunity from tort liability for them. Thus, employees waive their right to sue their employers. Families of deceased employees who wish to seek compensation is through workers compensation law, however claimants need to establish eligibility (e.g. mental-mental claim) as per stipulated by relevant State law and also establish sufficient causality to ensure that suicide did not break the chain of causation. While the worker's compensation statutes normally provide for strict liability of employers (regardless of the fault or negligence of the employer or supervisory employee) to compensate employees for injuries which is highly beneficial to claimants the bar to workers bringing other civil claims against their employers on the basis that it is an "exclusive remedy" and is clearly open

to some criticism. Another issue with the workers compensation law is that there is no uniformity in rules adopted or the restrictions on legal action that apply across the different States. In determining if compensation is available from an employer for an employee's suicide for example the State's judicial authorities can adopt the Sponatski rule or chain of causation rule. Any employers' attorney will wish the claim to be decided under the Sponatki rule (and not the chain-of-causation or New York rules) to minimise the chances for a compensation claim being upheld.

There are no corresponding issues of proof and jurisdictional confusion in the UK where the law of negligence is applicable throughout the UK and primarily concerned with issues of causation, foreseeability and proximity of harm. Interestingly what the courts in the UK have not accepted in cases concerning death by overwork is that the stress related illness (caused by overwork or an intimidating work environment) underlying someone's death should be accepted as a proximate cause of death for which damages can be recovered. This means recovery of compensation on this basis for the executors of victims of death by overwork is highly unlikely

However, they have conceded in the *Corr* case that in cases involving death by suicide at work where it is confirmed that a stress related illness is a foreseeable consequence of the employer's behaviour it is not necessary for suicide also to be a foreseeable consequence for liability to be established.

As the law of negligence no longer draws any distinction, for purposes of foreseeability and causation, between physical and psychological injury (*Page v Smith; House of Lords in Corr*) negligence is now established as a possible cause of stress related illness and an employer must take his victim as he finds him then, it is not unreasonable to assume that a court decision or legislation will be forthcoming in the not too distant future which will rule that an employer can be potentially liable for the death of an employee caused by an excessive workload or stressful demands placed upon them.

In the meantime the legal rules in both jurisdictions dealing with this aspect of death at work will (for reasons mainly related to evidential obstacles) be equally useless.

In the United States the employer-employee relationship is normally treated as terminable at will by either party under common law (subject to exceptions under State or Federal laws or under express contractual restrictions). Thus, allowing employers to dismiss employees at any time for any reason or for no reason.

Also Federal law ^{cxiii} does not prohibit dismissal or any other sanction for workers who refuse to do overtime nor does it impose limits on maximum hours to protect workers against excessive work hours.

Employers can legally impose non-voluntary overtime upon workers to work beyond 40 hours a week.

Compare this with position in the UK where there is at least protection for almost everyone against unfair dismissal under the Employment Rights Act 1996 which includes the right to claim constructive dismissal and protection for some against working excessive working hours under the Working Time Regulations.

However, the reality is there is little in the way of established and recognised routes for executors to seek legal remedies in the UK in the event that a family member suffers death by overwork. This lack of recourse to the law is made possible by a general reluctance to accept that this type of death is attributable to the action or inaction of employers. It is also made possible by a dearth of accurate monitoring and reporting on death by overwork or death by suicide. The Corporate Manslaughter and Corporate Homicide Act 2007 will potentially lead to criminal liability for the decision-makers whose actions lead to death at work although in light of the position highlighted this is unlikely to make much difference in this kind of case.

In the United States the best chance of legal redress for executors of persons who die as a result of stress caused by overwork are the Workmen Compensation Laws but the varied legal tests and evidential standards applying across States produces uncertainty and lack of consistency in these cases.

What evidence there is indicates that the karoshi and karojisatsu phenomenon experienced in Japan is also occurring in the United States and the United Kingdom but unlike the position in Japan is largely going unchecked.

The Universal Declaration of Human Rights in 1948 stipulated that “Everyone has the right to rest and leisure, including reasonable limitation of working hours ... (Article 24)”. Nevertheless, in reality sixty years later in both jurisdictions discussed in this article the legislators and the judiciary has failed to take the necessary steps to implement this right and protect workers in their respective countries.

It is our view this matter is important and needs resolved quickly in both jurisdictions.

ⁱ Koyabashi, T Middlemiss, S Employers' Liability for Occupational Stress and Death from Overwork (Karoshi) of workers in Japan (2008) Vol. 1 Issue 3/4 *International Journal of Private Law* pp 256-267

ⁱⁱ Hiroshi Kawahiko, The Secretary General of the National Defence Council for Victims of Karoshi (established in 1988) in Japan explained in an interview in the year 2000 that at least 10,000 people were estimated to have died from overwork annually in Japan however, in reality the figure could be as much as 30,000 or even 50,000 see Redford, K. (2000), Matters of Opinion: Nation grapples with death from overwork, Interviews, *Daily Yomiuri On-line*.

ⁱⁱⁱ Reiss, M (2000), American Karoshi, *New International Magazine*, March 2002.

^{iv} Tischler, L (2005), Extreme Jobs, *Fast Company*, April 2005, p.55.

^v Hewlett, S.A. and Luce, C.B., "Extreme Jobs: The Dangerous Allure of the 70-Hour Workweek", (2006) Vol. 84, No.12 *Harvard Business Review*, pp.49 – 59.

^{vi} "Job stress", The American Institute of Stress, <http://www.stress.org/job.htm>.

^{vii} "Work-Related Mental Stress Injuries in the NYS Workers' Compensation System", NYS Workers' Compensation Board, September 1997, Chapter 6, p.67.

^{viii} TUC Welcomes European Parliament Challenge to UK on long hours, *TUC News Release*, 11 February 2004.

^{ix} Stress-related and psychological disorders, *Health and Safety Executive's stress statistics*.

^x "Work to death factsheet", *Hazards* 83, July – September 2003

(<http://www.hazards.org/workedtodeath/dropdead.pdf>).

^{xi} In March 1998 UNISON secured a £25,000 settlement from North East Essex Mental Health NHS Trust for the family of mental health nurse, Mr Richard Pocock, who took his own life after being subjected to bullying and harassment by macho style management. In January 2000 Pamela Relf, a 36 year teaching veteran, killed herself after she was criticised by OFSTED inspectors. Her suicide note stated that she found the stress of her job too much and the pace of work and the long days were more than she could do. In 2002 an Assistant Head Teacher, Patrick Stack, 45, committed suicide due to what was described as a "Herculean workload". In July 2002 a 26-year-old mail centre worker who was black was driven to suicide after enduring constant bullying at the depot where he worked. In August 2003 General Practitioner Dr Dawn Harris killed herself after becoming depressed because of the job stress she suffered. Jane Dibb who was 28 and taught English and Drama at Penair School in Truro killed herself by setting herself alight. She had complained about the pressure of her work.

^{xii} *Stress*, the Health and Safety Executive. <http://www.hse.gov.uk/stress/index.htm>,

^{xiii} Cranwell-Ward, J. and Abbey, A. (2005), *Organisational Stress*, Basingstoke, Palgrave MacMillan, p.22-23.

^{xiv} Thompson, P. and Warhurst, C. (1998), *Workplaces of the Future*, Basingstoke, Palgrave, p.17.

^{xv} Mental Health and Working Life, *WHO European Ministerial Conference on Mental Health in Helsinki*, 2005.

^{xvi} Koyabashi and Middlemiss, Above note 1

^{xvii} Golden, L and Jorgensen, H, "Time After Time: Mandatory overtime in the US Economy", *Economic Policy Institute Briefing Paper*, January 2002.

^{xviii} Ibid.

^{xix} Miller, J and Miller, M., November 2005 28 “Get a life!” *Fortune* pp.39 – 48.

^{xx} Hewlett, S.A. and Luce, C.B., “Extreme Jobs: The Dangerous Allure of the 70-Hour Workweek”, December 2006 Vol. 84, No.12 *Harvard Business Review* pp.49 – 59.

^{xxi} Ibid.

^{xxii} Blanpain, R., et al, (2007) *The Global Workplace: International and Comparative Employment Law – cases and materials*, Cambridge University Press, New York, p.123.

^{xxiii} E.g. New York State Workers’ Compensation Board

^{xxiv} Golden, L and Jorgensen, H, “Time After Time: Mandatory overtime in the US Economy”, Economic Policy Institute Briefing Paper, January 2002, available from <http://www.epinet.org/briefingpapers/120/bp120.pdf>

^{xxv} <http://www.dol.gov/compliance/topics/safety-health.htm>

^{xxvi} 2008 edition of “*Death on the Job: The Toll of Neglect*” AFL-CIO report on the state of safety and health protection for America’s workers

^{xxvii} International Labour Organisation, “*Worker’s Compensation Laws*”, Mental Health in the Workplace, United States – Part 1.

^{xxviii} The US Equal Employment Opportunity Commission (www.eeoc.gov/ada).

^{xxix} The U.S. Equal Employment Opportunity Commission, “Disability Discrimination” (<http://www.eeoc.gov/types/ada.html>)

^{xxx} Diller, M., April 1998, Vol. 76, Issue 5, “Dissonant Disability Policies: The Tensions Between the Americans with Disabilities Act and Federal Disability Benefit Programs”, *Texas Law Review*, pp. 1004 – 1005.

^{xxxi} International Labour Organisation, “The ADA’s Coverage of Mental Illness”, Mental Health in the Workplace, above note 27

^{xxxii} Coyle, W.P., “Cause of Action Against an Employer for Discrimination Because of Mental Illness, Pursuant to the Americans with Disabilities Act”, *Cause of Action 2nd Series*, November 2006.

^{xxxiii} An employee must file a discrimination charge with the Equal Employment Opportunity Commission (EEOC) or the appropriate state agency within 300 days after the alleged discriminatory action by employer before bringing a claim under the ADA

^{xxxiv} International Labour Organisation, “The ADA’s Coverage of Mental Illness”, Mental Health in the Workplace, above note 27

^{xxxv} Kizziar, J.H.Jr., “Development in Disability Discrimination”, 2006 Labour and Employment Conference, Austin, Texas, May, 2006, p.3.

^{xxxvi} *Mundo v. Sanus Health Plan of Greater New York*, June 24, 1997 see also *Weiler v. Household Finance Corporation*, Illinois, November 27, 1996

^{xxxvii} *Carroll v. Xerox Corporation, et al*, Appeal from the United States District Court for the District of Massachusetts, June 28, 2002.

^{xxxviii} Phan, B. and Kleiner, H., (1999) Vol. 18, No.8 “The Basics of Employment Discrimination”, *Equal Opportunities International*, p.10.

^{xxxix} Cicmanec, A. and Kleiner, B.H. (2002) Vol.44, No. ½, “A Statistical Look at Judicial Decisions Concerning Employment Law”, *Managerial Law* p.3.

^{xl} *Jamison v. Storer Broadcasting Company*, United District Court, E.D. Michigan, South Division, April 8, 1981.

^{xli} The New York State Workers’ Compensation Board, (1997) Above note 7 p.3.

^{xlii} Tipon, E.S (2003) Vol. 5 “Compensability Under Occupational Disease Statutes of Emotional Distress or Like Injury Suffered by Claimant As Result of Nonsudden Stimuli”, *American Law Reports*, p 115

^{xliii} The New York State Workers’ Compensation Board, (1997) Above note 7, p.3.

^{xliv} These are: accidents caused solely due to the intoxication of the injured employee; accidents caused by the wilful intent of the injured employee; accidents caused by the intentional actions of or at the direction of the employer; or cases where the employer fails to provide the required insurance.

^{xliv} Muhl, C.J. January 2001 The Employment-at-Will Doctrine: Three Major Exceptions. *Monthly Labor Review*, p.4.

^{xlvi} The New York State Workers' Compensation Board, 1996, Above note 7 p.8.

^{xlvii} The New York State Workers' Compensation Board, 1996, Above note 7 p.18.

^{xlviii} Policy and Regulation Development Bureau, "Compensation for Chronic Stress", A briefing paper, February 23, 1998, Canada.

^{xliv} Ibid.

ⁱ Tipon, Above note 42, Section 26, 2003.

^{li} Tipon, Above note 42 Section 27, 2003.

^{lii} 737 A.2d 317 (Pa. Cmwlth. 1999).

^{liii} *Swanson v. City of St. Paul* 526 N.W.2d 366, 368 (Minn. 1995)

^{liv} NYS Workers' Compensation Board, Above note 7, p.27.

^{lv} Purver, J.M, "Workers Compensation: Disability Resulting from Mental Stress", American Jurisprudence Proof of Facts 2d, 24 2d 1, Database Updated July 2006.

^{lvi} The New York State Workers' Compensation Board, Above note 7 p.66.

^{lvii} 219 N.Y.S.2d 14 (1961)

^{lviii} The New York State Workers' Compensation Board, Above note 7 p.19.

^{lix} *Kavanaugh v Empire Mutual Insurance Group et al* (1989) Cal. 3rd Cir.

^{lx} The New York State Workers' Compensation Board, Above note 7, p.19.

^{lxi} *Kinney v. State of Connecticut*, 213 Conn. 54, 566 A.2d 670, November 28, 1989. At the time of his death Frank. J. Kinney was presiding criminal and administrative judge of the criminal division for the judicial district of New Haven but also the chief administrative judge of the criminal division for the entire state, in addition to acting as the chairman of the Commission to Study alternative Sentences and undertaking various administrative assignments.

^{lxii} The New York State Workers' Compensation Board, Above note 7 , p.23

^{lxiii} *Corr v IBC Vehicles* (2007) Q.B. 46

^{lxiv} Bradshaw, L.A Bradshaw, L.A., "Suicide as compensable under workmen's compensation act", American Law Reports ALR3d.

^{lxv} *Sponatski v. Standard Accident Insurance Co*, Supreme Judicial Court of Massachusetts, L.R.A. 1916A, 333, 220 Mass. 526, 108 N.E. 466, March 31, 1915.

^{lxvi} Reported as *Mershon v Missouri Public Serv.Corp.*, 221 S.W.2d 165, 167, Mo. 1949

^{lxvii} This narrowly defined rule has been steadily replaced by the "chain of causation" rule in States such as: Arizona, California, Connecticut, Florida, Illinois, Michigan, Mississippi and New York. In addition Wisconsin, Ohio, Pennsylvania and Minnesota are moving toward adopting the chain-of causation rule.

^{lxviii} *Stroer v. Georgia Pacific Corporation*, 672 P.2d 1158 (Oklahoma 1983).

^{lxix} *Friedman v. NBC Inc. et al*, 178 A.D 2d 774, 577 N.Y.S.2d 517, December 26, 1991.

^{lxx} *Delinousha, et al v. National Biscuit Co*, 248 N.Y.93, 161 N.E.431, May 1, 1928.

^{lxxi} The New York State Workers' Compensation Board, "Appendix F: Compensation of Mental Stress Claims in Other Jurisdictions", September 1997, p.XVI.

^{lxxii} 135 Ariz. 273, 660 P.2d 874, March 3, 1983.

^{lxxiii} However, the State of Connecticut applied the New York rule and disallowed a claim of "mental or emotional impairment" on the basis that such impairment must arise from physical injury or occupational disease.^{lxxiii}

^{lxxiv} *Perniciaro v. Martin Marietta Corporation*, 613 So.2d 775, January 28, 1993.

^{lxxv} Blyton, P. and Turnbull, P., *The Dynamics of Employee Relations*, Second Edition, Palgrave, New York, 1998, p.326.

^{lxxvi} “The UK’s long-hours culture is becoming endemic in the world of the white-collar worker”, *Personnel Today*, 27 June 2005.

^{lxxvii} “One in six UK workers put in more than 48 hours a week”, *Work-Life Balance*, TUC, 29 January 2001.

^{lxxviii} Gillan, A. *Work until you drop: how the long-hours culture is killing us*, *The Guardian* Saturday 20 August 2005 <http://www.guardian.co.uk/uk/2005/aug/20/britishidentity.health>

^{lxxix} “Self-reported Work-related Illness (SWI05/06)” “Stress-related and psychological disorders” Health and Safety Executive.

^{lxxx} Melchior, M et al. (2007) *Work stress precipitates depression and anxiety in young, working women and men*, *Psychological Medicine*, Vol. 37, Issue 8, pp 1119-1129

^{lxxxi} Campbell, Iain, “Cross-national comparison – Work Time Around the World”, Australian Council of Trade Unions, August 2002.

^{lxxxii} *Hone v Six Continents Retail Ltd*, Court of Appeal [2005] EWCA Civ 922.

^{lxxxiii} *Pakenham-Walsh v Connell Residential*, Court of Appeal [2006] EWCA Civ 90

^{lxxxiv} The Health and Safety at Work Act 1974 is the primary source of legal rules supplemented by various Regulations. As these are criminal provisions they are outside the scope of this work.

^{lxxxv} *Johnstone v Bloomsbury Health Authority* [1991] IRLR 118, Court of Appeal.

^{lxxxvi} *IDS Brief* 820, p.29.

^{lxxxvii} *Walker v Northumberland County Council* [1995] IRLR 35, Queen’s Bench Division.

^{lxxxviii} *Sutherland v Hatton* [2002] EWCA Civ 76

^{lxxxix} *Barber v Somerset County Council* HL 2004 UKHL 13

^{xc} Ross, M, “Stress: What can an employer do?” *Employment Law & Litigation*, 5 November 2004.

^{xci} An exception was *Ballantyne v Strathclyde Regional Council* [1998] Unreported in which a pursuer received £66,000 for bullying and harassment that had allegedly caused her stress related illness.

^{xcii} *Rorrison v West -v- West Lothian College and Lothian Regional Council* [1999] Scot CS 177; 2000 SCLR 245

^{xciii} *Cross v Highlands and Islands Enterprise* [2001] IRLR 336) CS.

^{xciv} *Ibid* Opinion of Lord MacFadyen, (a) The duty not to expose employees to risk of psychiatric injury, para.63

^{xcv} ‘Personal injuries’ includes any disease or any impairment of a person’s physical or mental condition (Section 10.1).

^{xcvi} *Wardlaw v Bonnington Castings* [1956] SC (HL) 26

^{xcvii} Lord President Clyde stated in *McKillen v Barclay Curle & Co Ltd* [1967] SLT 41

that ‘in the Scottish law foreseeability had no relevance to the determination of the measure of damage once liability had been established.

^{xcviii} [2006] EWCA Civ 331, [2007] Q.B. 46

^{xcix} Referring to the decision in *Simmons v British Steel plc* (2004) S.C. (H.L.) 94

^c “Negligent employer liable for employee’s suicide”, *IRS Employment Review* 854, 8 September 2006, p.63.

^{ci} *Fraser v State Hospitals Board for Scotland* (2000) IRLR 672

^{cii} *Corr v IBC Vehicles* [2008] UKHL 13

^{ciii} [2008] 2 W.L.R. 499

^{civ} “Suicide could be a novus actus if a person took his own life as a conscious decision in the absence of any disabling mental illness. However, his suicide was not a voluntary, informed decision taken by him as an adult of sound mind making and giving effect to a personal decision about his future. It was the response of a man suffering from a severely depressive illness which impaired his capacity to make reasoned and informed judgments about his future, such illness being a consequence of his employer’s tort.”

^{cv} *Osborne-Clarke (as personal representative of Nigel Osborne-Clarke deceased) v Commissioners of Inland Revenue* ET Case No. 1400656/04.

^{cvi} *Donnachie v Kingston upon Hull City Council* [2004] UKHL 36

^{cvi} Which has lasted or is likely to last for 12 months

^{cvi} “Corporate manslaughter”, *IDS Employment Law Brief* 788, September 2005, pp 17 – 18.

^{cix} Antoniow, M., “Corporate manslaughter Bill to get teeth”, *Personnel Today*, 28 March 2006, p.19.

^{cx} “Human Rights Act and employment law update”, *IDS Employment Law Brief* 779, April 2005, p.11.

^{cx} “Corporate Manslaughter and Corporate Homicide Bill – Briefing on Amendments”, Centre for Corporate Accountability, 11 January 2007, p.10.

^{cxii} *Smith and Grady v United Kingdom* (2000) 31 EHRR 620

^{cxiii} Federal Labour Standards Act of 1938 (FLSA)