

The next healthy workplace challenge

Anthony Judge and Jon Gibson discuss whether increasing public awareness of the impact of building design on the work environment and staff health will lead to a new kind of litigation

For many years the law has required employers to take steps to look after the health and safety of their employees.

At common law, employers have a duty to take reasonable care for the safety of their employees and a duty to see that reasonable care is taken to provide them with a safe place of work and a safe system of working.

Separately, employers (and in some cases landlords) have certain statutory duties under health and safety legislation with respect to the protection of employees and others.

The main statute for these purposes is the Health and Safety at Work etc Act 1974. This is underpinned by a plethora of specific health and safety regulations governing a wide range of matters, including personal protective equipment, working at height, control of noise, vibration, asbestos, and many others.

Traditional personal injury claims for employers' negligence

Over the years there have been a multitude of incidents resulting in claims brought by employees for personal injuries relating to the workplace. A key feature of any personal injury claim by an employee is a breach of a duty of care by the employer which causes the injury and which was reasonably foreseeable, ie the employer acted negligently.

In the past, such claims centred on situations such as staff working on construction sites and in factories, where working at height or using heavy machinery created risks of injury that were reasonably foreseeable. There is also a body of case law relating to the use of a keyboard and screen for long hours.

What has changed in relation to our understanding of employee welfare?

A large body of research over the past few years has

Practical steps to improve health, wellbeing and productivity in the workplace

- Vision, buy-in and guidance – it is essential to secure the buy-in of senior business leaders and traditionally siloed business functions, such as HR, IT, FM and operations.
- Engage staff – co-opt employees in actions to influence and improve the workplace.
- Undertake regular (perhaps annual) staff perception/satisfaction surveys on specific aspects of the workplace linked to health and wellbeing.
- Design an Activity-Based Working (ABW) space and provide employees with more control. The workplace should be designed to enable a range of tasks, eg quiet areas, breakout space, meeting rooms and fair access to daylight. Changes to ABW should always be supported by cultural change leaders.
- Install plants in offices to reduce CO₂ and to increase visual impact.
- Make the office visually appealing. Studies show that art displays, for instance, are linked to improved mental health and wellbeing benefits.
- Open windows in the afternoon (where practical and the outside air quality means that it is safe to do so).
- Use natural or low-chemical cleaning products.

addressed "soft" health and safety issues, such as the impact on the performance and the health of employees of ambient noise at (relatively) low levels in open-plan offices, inappropriate and inflexible levels of lighting, and poor air quality in an office environment.

For example, Harvard studies published in November 2015 and June 2016 show clear benefits to the cognitive function of office workers where ventilation was improved and levels of CO₂ and certain chemicals and volatile organic compounds (VOCs) were reduced. Similarly, the presence of plants in offices has been shown to help clean the air.

Could employees bring a claim based on these issues?

We are not aware of any publicised employee claims relating to these areas to date, but this may change, as our increasing awareness of these issues makes it more likely that a court would decide that it is reasonably foreseeable that actionable harm could arise from workplaces that do

not take account of these factors.

The Workplace (Health, Safety and Welfare) Regulations 1992 include provisions about workplace ventilation, temperature, lighting, cleanliness, space and workstations.

The related HSE Approved Code of Practice provides further guidance on these issues. Even where specific regulations and guidance do not explicitly cover such areas, the general common law and statutory rules will apply.

We think it is likely that employees with health issues that can be linked to these concerns will increasingly be raising them with their employers and, where such matters are not adequately addressed, they could help to form the basis of a successful future legal claim.

What can employers do to improve employees' health?

Employers need to consider whether their building systems are optimal for human health. The real estate industry is already looking at ways to

improve the workplace in order to benefit employee health and wellbeing.

A recent example is the report by the UK Green Building Council describing their members' experience of "wellbeing labs". These labs examined shared experiences of practical steps taken to improve health, wellbeing and productivity in the workplace. Some of the key practical steps that organisations can take are summarised in the box, focusing primarily on the easier wins for occupiers to consider implementing in their fit-out and their use of existing workplaces.

What can property owners do to assist occupiers to put these steps into place?

The above points are generally relevant to an occupier's fit-out and operations. However, landlords can assist by:

- being cognisant of how the base building design can affect an occupier's staff's health and wellbeing beyond the legal requirements of planning control and building regulations; and
- providing clear drafting in leases to clarify which party is responsible for providing and ensuring the ongoing quality of relevant services such as fresh air and filtered water.

Accommodating these key emerging occupier trends will help to future-proof owners' investments.

It makes legal as well as commercial sense for investors and employers to consider the impact that the workplace has on the workforce, and to take measures which will promote health and wellbeing and also stimulate productivity.

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