

# Is Stress A Disability?

In the know

**The Employment Appeal Tribunal has considered a case in which an employee was claiming protection under the Equality Act 2010 because he suffered from stress, which he said was a disability. Is stress a disability? Here, we take a look at the judgment in *Herry v Dudley Metropolitan Borough Council*.**

## Series of fit notes

Herry worked as a Design & Technology teacher with the council. From 2010, he lodged many sick notes citing conditions such as “leg pain and stress”, “ankle pain and stress”, but from 2013 they were in relation to “stress at work”, “stress” or “stress and anxiety”. The employer obtained an occupational health report which said that Herry “took no medication for stress and was mentally and physically able to perform his role”, but there were “still outstanding management (non-medical) issues at the workplace which are causing “stress” and “patient feels the behaviour of certain individuals is what is stopping him from returning to work at the school and causing him stress”. The employee claimed disability discrimination and so first, it had to be declared by the Employment Tribunal that the employee’s stress was a disability protected under the Equality Act 2010.

## Employment Appeal Tribunal decides stress is not a disability

In order for a condition to be classed as a disability under the Act, it must be a physical or mental impairment which has a substantial long term adverse effect on the individual’s ability to carry out normal day-to-day activities.

The Employment Appeal Tribunal found that stress is not a mental impairment. It drew a distinction between a mental impairment and a “reaction to life events”. It found that the employee’s stress was “very largely a result of his unhappiness about what he perceives to have been unfair

treatment of him”. It also said: “There is a class of case where a reaction to circumstances perceived as adverse can become entrenched; where the person concerned will not give way or compromise over an issue at work, and refuses to return to work, yet in other respects suffers no or little apparent adverse effect on normal day-to-day activities”.

The length of time that an employee spends on sickness absence is not determinative as to whether their condition is a disability.

## Croner Tips

- Stress, alone, is not a mental impairment which will qualify as a disability and so protect an individual from discrimination. It is an individual’s “reaction to life events” which can be due to their refusal to compromise or give way in a difficult situation.
- However, employers should be careful not to discount stress completely because it may then cause the employee to suffer from mental or physical impairments that could potentially qualify as a disability.
- Occupational health reports would be advisable when an employee presents fit notes citing stress to obtain as much information as possible in relation to how it manifests itself in the employee.

**Please contact the Business Support Helpline for advice on your specific situation before acting on the information in this article.**