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Night shift work and health risks - dealing with the fall-out

William O'Neill *Employers' Law* 03 June 2009 00:00 This article first appeared in *Employers' Law* magazine. **Subscribe online** and save 20%.

A recent payout by the Danish government highlights the risks to health of prolonged night-shift work. William O'Neill assesses the dangers for employers, and how they might have to handle them.

Key points

- As a carcinogen, working night shifts has been put on the same level as exposure to UV radiation and diesel exhaust fumes.
- The Danish government has awarded compensation to certain women who developed breast cancer after many years of working shifts.
- There is no such scheme in the UK - this means employees might bring personal injury claims against businesses.
- It will be difficult to prove a link between ill health and shift work in the courts, but employers need to keep on top of any developments.
- As with asbestos, long latency periods may mean that the full impact of such exposure will not be seen for many years yet.

Policy guidelines

- Minimise back-to-back night shifts as far as possible.
- Take appropriate action if health risks are identified.
- Have a formal process so that employees can raise concerns about health at work.
- Act on their concerns appropriately and promptly.
- Note any statutory obligations and ensure they are met.
- Ensure Working Time regulations are observed by night shift line managers and employees.

Research and payouts

The Danish government acted to award compensation to breast cancer victims following research by the International Agency for Research on Cancer (IARC), part of the World Health Organisation in 2007.

The research placed shift work on the same level as anabolic steroids, ultraviolet radiation and diesel engine exhaust fumes as a 'possible human carcinogen'. This puts it just below Category One risks, or known carcinogens, such as asbestos and tobacco smoke.

The IARC drew evidence from a wide number of studies of humans and animals, and found that women who had been working night shifts for more than 30 years were 36% more likely to suffer from breast cancer than those women who had never worked night shifts.

Scientists have a number of theories about the apparent link between overnight work and cancer. Some believe that disruption of the circadian rhythm, or 'biological clock', puts additional stress on the body and makes it less able to repair itself. Moreover, alterations in sleep patterns may reduce the production of melatonin, a hormone which can suppress tumour development, in the body.

So far, the Danish government has made payments to 40 women, including flight attendants and nurses. However, not every claim was successful, and any women who had a family history of breast cancer had their claims rejected.

Darker side of the graveyard shift

There has never been any doubt that working nights puts additional strain on employees. It has been linked to a wide range of mental and physical problems, from disturbed sleep to irregular heart rhythms, and now a UN agency has ruled that late shifts probably increase the risk of developing cancer.

As a result, the Danish government paid compensation to about 40 women who developed breast cancer after long periods of working nights. Of course, we will not see the same situation in the UK - our government does not provide any such state compensation fund. However, this is likely to place any risk with employers, who must keep on top of medical and legal developments and take the necessary action to protect their workers.

Medical link

It is still to be determined whether there is a genuine medical link between developing cancer and

working long hours or night shifts, and the Health and Safety Executive (HSE) has commissioned a report into the issue. If such a causal link is found to exist, staff may, in future, be able to pursue claims for compensation along the same lines as, for example, employees who have suffered disease or illness following exposure at work to noxious substances such as asbestos.

These claims have been successful where employers knew, or ought to have known, about the risks posed by asbestos to their employees' health, but took no or insufficient action to prevent or reduce their exposure to it. If the risk of injury is reasonably foreseeable and the employer takes no reasonable steps to assess, minimise or remove the risk, it is likely that they will be found negligent or in breach of their statutory duties.

If more evidence emerges about the dangers associated with night working, it is not difficult to envisage such a situation arising. If a link is established between long periods of working night shifts and the risk of developing cancer, continuing to expose staff to such a risk could leave businesses liable for any damage caused to its employees' health.

Penalties

The penalties for employers found to have caused harm to their staff will vary. If prosecuted by the HSE, the employer could face an unlimited fine. If, however, an individual were to succeed with a claim for illness or disease, such as breast cancer caused by long-term night working, the remedy would be compensation. The amount would depend on the nature or extent of the injury and any associated losses, and would be dependent on the facts of each case. Claims such as this should be covered by the employer's compulsory liability insurance, but could lead to an increase in premiums.

The impact would be likely to hit larger employers the hardest, and particularly those for whom night workers play an integral role. Of course, this is partly because with a larger workforce more individuals are likely to be affected. In addition, larger companies have the influence - and the industry knowledge - to be expected to be aware of the risks and dangers and to take steps to deal with them.

As a starting point, employers should look at any practical steps they can take to minimise the general impact of night work. These could include ensuring that there are regular shift patterns and/or split night shifts, or minimising the back-to-back night shifts that can result in disturbed sleep patterns.

Raising concerns

There are a number of ways employees might raise concerns if their working patterns could be damaging their health, from an informal chat with managers to a letter expressing a formal grievance. A staff manual or handbook (or even a contract of employment) may well include information that will point employees in the right direction. However the employee chooses to raise the issue, it should be taken seriously and dealt with swiftly and appropriately.

If a formal grievance is raised in writing, the employer must respond to this and follow the Acas Code of Practice for grievances and/or their own internal procedures. This would involve inviting the employee to a meeting to discuss the grievance. In a large business, if a number of employees are raising concerns about the impact on their health of working long shifts, the employer might want to carry out further investigations and obtain up-to-date research.

If staff suspect that they have suffered illness or injury which is work-related they should take legal advice without delay to consider the possibility of pursuing a personal injury claim against their employer for compensation. They would need to establish that a duty of care was owed to them by their employer (such as the duty to provide a safe system of work), that the employer breached that duty, and that the breach caused or materially contributed to the injury. Employers also have statutory obligations, and breaches of these may also lead to liability.

Proof

Crucially, the employee must prove, on the balance of probabilities, that any breach by the employer caused the injury. This would have to be demonstrated with medical evidence from a suitable expert. In the absence of any conclusive and accepted medical research confirming links between cancer and night-shift work, claims are likely to fail. Employees will also have to rule out other possible causes, such as an unhealthy lifestyle or family medical history. Employers are likely to defend such claims on the basis that they did not know and could not have known about the risks, or that the employee cannot establish to the requisite burden of proof that their cancer was caused by their working patterns. These arguments are likely to prevail as things stand. With the present lack of accepted medical evidence, staff are likely to struggle, although employers should keep an eye out for developments, particularly the HSE's report.

The case in Denmark is perhaps a good reminder to employers to review the working patterns of their employees and ensure that they are not working too long, too late, or too many night shifts. Employers should also remind themselves, or take proper legal advice, on the provisions of [the Working Time Regulations 1998](#).

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