

## Managing Stressed Employees in Difficult Economic Times

By Jennifer Gimler Brady and Michael B. Rush

Today's economic crisis has an astounding impact on America's workforce, manifested in stress levels and productivity. The American Psychological Association and Workplace Options, a North Carolina benefits company, reports that almost half of all employees "feel stressed" over financial matters, and nearly as many feel less productive due to the current economic uncertainty. Aside from the decline in their personal financial portfolios, many employees are confronting what has become an almost constant threat to job security, as reductions in force are anticipated in many sectors throughout the year. With an unemployment rate of 8.5% and an underemployment rate exceeding 14%, the workplace can be a very stressful environment.

A direct correlation to the uncertainty caused by stress is the increase in the utilization of employee assistance programs ("EAPs"). Typically, employee utilization of these programs is in the 4% to 8% range. More recently, however, EAPs have reported a 30% to 40% increase in utilization rates. When the Employee Assistance Society of North America (EASNA), the leading trade association for EAP providers, surveyed its members, it found an almost 90% increase in requests for financial services provided by EAPs. Requests for legal services provided by EAPs in-

**Jennifer Gimler Brady** is the chair of Potter, Anderson & Corroon's Litigation Group and has been a member of the firm's Executive Committee since 2003. She concentrates her practice in the areas of health law, labor and employment law, and commercial litigation. E-mail: [jbrydy@potteranderson.com](mailto:jbrydy@potteranderson.com). **Michael B. Rush** is an associate in the firm's Litigation Group, focusing primarily on general litigation in the Delaware state and federal courts. E-mail: [mrush@potteranderson.com](mailto:mrush@potteranderson.com).

creased over 40%, while requests for services related to domestic violence and substance abuse programs increased over 10%.

Employers are facing significant new challenges in managing employees who are working at unprecedented stress levels. Learning to identify the signs of stress and understanding the employment laws that may be called into play when dealing with stressed-out employees are among these challenges.

### SOURCES OF EMPLOYEE STRESS

The most obvious source of employee stress is the fear of job loss. Each day is punctuated by reports of layoffs, and plant or store closings. As job cuts increase, employee stress mounts. This stress stems not only from the fear of losing one's job, but also from the uncertainty that a job loss would bring in terms of the effects on one's family and economic situation.

Reductions in force also increase employee stress due to the pressure they place on employees to meet increased job expectations. Employees will likely feel the need to enhance performance in the hope that they will be spared from a layoff. Moreover, employees who are fortunate to retain their positions will confront the sobering reality that they now have fewer people to do the same amount of work. That is another recipe for stress. "Survivor guilt" also can take its toll on the employees who retain their positions. Survivors of mass layoffs report feelings of grief, anger and guilt. These feelings may be shared by managers who conducted the layoffs.

### SPOTTING STRESS IN THE WORKPLACE

Stress is not a one-size-fits-all condition. Employees may respond to stressors differently, and stress can manifest itself in different ways. However, the following are some common indicators of stress.

*Depression and Other Illnesses.* Often a major sign that employees are stressed out, depression is the most common reason for stress-related absences. Similarly, an unexpected increase in the use of sick days for minor illnesses and colds may be an

indication that an employee is under significant stress.

*Performance.* A decrease in productivity or a marked drop-off in the quality of work are also major indicators of stressed-out employees. Employers may notice employees working less and perhaps taking more frequent coffee or smoke breaks. Similarly, an increase in the number of overtime hours, with little output to show for these additional hours, could be a sign of a stressed-out workplace.

*Inappropriate Behavior.* Another sign that employees may be under significant stress is an increase in misconduct or other negative interactions with management. In general, if an employer notices an increase in instances of employee insubordination, or an increased number of situations where employees are lashing out at one another or management, this could signal elevated employee stress. Likewise, increased stress may be to blame for a noticeable increase in employee complaints about certain tasks or their workloads. This increasing frustration might be evidenced by employee complaints that no one listens to them or threats of quitting.

### LEGAL IMPLICATIONS

As discussed above, stress, a common factor in life, has taken on greater significance in today's uncertain economic environment, and employers need to be aware of some important legal considerations that may come into play when dealing with a stressed-out workplace. Claims related to stress may implicate several employment laws, such as state workers' compensation laws, the Family and Medical Leave Act ("FMLA"), the Americans with Disabilities Act ("ADA"), and possibly other state and federal laws. Extreme stress can cause problems of varying degrees, which could lead to potential liability if not managed proactively by employers.

### EMPLOYMENT LAWS TO CONSIDER

The workers' compensation laws of the particular jurisdiction in question are potentially applicable employment laws with respect to stress.

*continued on page 4*

## Stressed Employees

*continued from page 3*

Based on the stress an employee is experiencing, an employee may file a workers' compensation claim if the stress manifests itself in a physical or mental impairment. The success of a workers' compensation claim for mental injury based solely on stress will depend largely on the jurisdiction where the claimant is employed. For instance, many states require a physical injury and thus will bar claims for mental injuries caused solely by stress. Other states require that the mental injury be the result of a specific incident or event, such as a sudden shock, and, therefore, deny compensation where the sustained stress and strain of employment is responsible. While some states permit recovery where the mental injury is caused by gradual stimuli, most of these states limit compensation to cases where the day-to-day stress responsible for the mental disorder is significantly greater than that normally experienced by employees and often require the stress to be "extraordinary" or "unusual." Finally, some states compensate mental injuries caused gradually by the ordinary stress of employment. Regardless of the specific criteria used, in most jurisdictions that allow such claims, an employee must be able to offer objective evidence that his or her work conditions were actually stressful and also that such conditions were a substantial cause of his or her mental disorder.

The FMLA is another potential source for concern. If an employee qualifies for leave under FMLA, that leave can be granted because of a serious health condition that makes the employee unable to perform the functions of his or her job. FMLA regulations define a serious health condition as "an illness, injury, impairment or physical or mental condition that involves inpatient care ... or continuing treatment by a health care provider ... ." In those situations where an employee is receiving treatment by a doctor for stress-related problems — and the doctor is willing to certify the person's mental injury (*i.e.*, stressed-induced condi-

tion) is a serious health condition for purposes of the FMLA — employers are well-advised to grant the leave request. As always, employers are reminded when dealing with employees taking FMLA leave to be vigilant throughout the process so as not to be exposed to retaliation claims.

It is also possible that the ADA could be implicated by stress in the workplace. For an ADA claim to be successful, employees must first show that they are disabled and also that they can perform the essential functions of their job, with or without accommodation. ADA defines "disability" as "a physical or mental impairment that substantially limits one or more major life activities." The most likely major life activity to be addressed by a claim is "working." Employees bringing stress-based ADA claims would argue that extreme workplace stress resulted in their having a disability that substantially limits their ability to work. Such irony hopefully would not be lost on the courts, many of which have held that job-related stress is not a disability and that employees are not entitled to reasonable accommodations. In fact, courts have consistently held that employers are not required to provide stress-free workplaces. Employers should bear in mind, however, that if workplace stress manifests itself in some other serious physical or mental impairment, that condition may be covered by the ADA.

### **DISCIPLINARY ISSUES AND THE NEED TO MAINTAIN CONSISTENCY**

Predictability can help reduce stress. Staying the course in addressing performance problems in a timely manner and uniformly and consistently enforcing workplace policies are steps employers must take. Employers who relax their standards as a way to release stress may in fact be increasing employee stress, as employees confront yet another question mark. Relaxing standards of performance could lead some employees to believe that failure to comply with policies will be tolerated, with the possible result being decreased productivity and disciplinary issues. Employers should be under-

standing and supportive, while continuing to maintain accountability.

### **WORKPLACE VIOLENCE**

In certain situations, an employee who is under extreme stress may pose a risk of harm to himself or others. Hopefully, these situations are few and far between, but employers need to be prepared. One step to take would be to train managers to recognize the signs of extreme stress that could lead to workplace violence. These signs may include dramatic changes in attendance or punctuality, unusual or heightened sensitivity to criticism, belligerent behavior, making threats (no matter how benign or exaggerated they may appear), extreme personality changes, unusual or animated outbursts of anger or emotion, or arguments with co-workers that do not get resolved. Employers should revisit (or develop) workplace violence policies to ensure that they are current and adequately address the potential for violent incidents. In today's environment, employers are cautioned to pay greater attention to any unusual or extreme outburst by employees. These actions may be more than just a single incident of reacting to pressure and stress. Such behavior must be taken seriously in efforts to protect employees, as well as the interests of the employer.

### **WHAT CAN EMPLOYERS DO TO HELP MANAGE EMPLOYEE STRESS?**

Stress in the workplace is unavoidable. However, employers can help employees manage their stress by taking a few simple steps, including:

- Communicate and listen. Uncertainty breeds stress, and hearing from management regularly, even when the news may not be positive, fosters a sense of common mission. Providing employees with a forum for voicing their concerns can be a very empowering stress-management tool.
- Be empathetic. Build a sense that everyone is in this together because employers and employees alike are affected by the current economic downturn. By demonstrating

*continued on page 5*

---

## ***Stressed Employees***

*continued from page 5*

a sensitivity to their personal situation, employers are helping employees cope.

- Be flexible. Increased workplace demands can be stress-inducing, and by offering some flexibility, the impact may be reduced. If possible, consider such things as permitting employees to alter their work hours or to work from home.
- Be consistent. Continue to follow workplace policies as closely as possible, recognizing the rapidly changing environment. Predictability, even in “bad news” situations, eases stress. Fairness and respect should never be downsized.

- Provide training. In-house programs on useful and timely topics may prove helpful to and appreciated by employees. Suggested subjects include financial management in uncertain times (budgeting, managing debt, investing, etc.); coping with stress; and job skills training for consolidated positions.
- Promote wellness. It is beyond question that prolonged, elevated stress can take a serious toll, physically and mentally. Employers can help minimize the negative effects of stress by offering wellness benefits, including health coaches (exercise and nutritional counseling); and health screenings (for example, blood pressure,

cholesterol and blood sugar, all of which can be adversely impacted by stress).

- Adopt an EAP. Reintroduce your EAP. Educate — or re-educate — employees about its benefits. For many employees, EAP orientations are a distant memory. Encourage utilization. Seeking assistance can help restore a sense of control.

### **CONCLUSION**

While no employer can guarantee a stress-free workplace, particularly in today’s chaotic and unpredictable economic climate, by taking some relatively simple, affirmative actions, employers can help employees manage, and perhaps even master, their stress.

