

## Bullying at Work

**This topic covers health and safety at work; breach of contract on the employer's part; and possibly criminal liability against the person or persons responsible for bullying another at work.**

Employers have a duty under section 2 of the Health and Safety at Work etc Act 1974 to ensure the health, safety and welfare of their employees.

**Serious bullying may give rise to criminal liability against the perpetrator(s) if the 'course of conduct' (that is to say, behaviour that must consist of *more* than a *single* incident of harassment), amounts to a breach of the Protection from Harassment Act 1997. This was confirmed by the Court of Appeal in *Majrowski v Guy's and St. Thomas's NHS Trust* (2005) EWCA Civ 251. An employer can be held to be vicariously liable by way of civil proceedings in a claim for damages for the actions of its employee.**

An employee who is subjected to bullying at work by a supervising employee or the employer itself has the option, if the bullying amounts to a fundamental breach of contract of an implied term of the contract, to terminate the contract of employment, with or without notice, and treat herself or himself as having been unfairly constructively dismissed and to make a claim to an employment tribunal to recover any financial loss he or she has suffered.

**The law provides an employee who is being bullied with statutory protection under a number of Acts including the Public Interest Disclosure Act 1998. For example, an employee who raises a grievance in good faith about a breach of the health and Safety at Work etc Act 1974 or/and a breach of the employment contract - being that the employer's conduct (whether as an individual or a body corporate and if the latter, for the purposes of the Act, the employer is 'a person') provides reasonable grounds for believing that 'a person has failed, is failing, or is likely to fail to comply with a legal obligation' - may, if the employee is subjected to a detriment or is dismissed thereafter for the reason that he or she made a lawful public interest disclosure under the Act, has a right under the Employment Rights Act 1996:- not to suffer a detriment (s.47A); not to be dismissed (s.103A); not to be selected for redundancy (s.105(6A)); and interim relief is available (ss.128(1)(b), s.129(1)).**

Similarly, under section 44 of the Employment Rights Act 1996 an employee is entitled not to be subjected to any detriment (being any disadvantage short of dismissal) by an act or a failure to act by her or his employer regarding a health and safety matter she or he brought to the employer's attention by reasonable means or, alternatively, acted upon whether as a safety representative or not.

**Under section 7 of the Health and Safety at Work etc Act 1974, it could be said that there is a duty upon employees who work together not to bully one another in that this section states that every employee is under a duty while at work: (a) to take reasonable care for the health and safety of himself and of others who may be affected by his acts or omissions at work; (b) as regards any duty imposed on his employer or any other person, to co-operate with him so far as it is necessary to enable that duty to be performed or complied with.**

The leading case in this area of the law is: *Majrowski v Guy's and St. Thomas's NHS Trust* (2005) EWCA Civ 251. The question before the Court was whether or not an employer can be vicariously liable for a breach of statutory duty by one of its employees (who, in this instance, was Mr Majrowski's female departmental manager) under the Protection from Harassment Act 1997. The judgment of the Court of Appeal was that an employer could be so liable.

**The judgment of the Court of Appeal was upheld by the House of Lords that dismissed the employer's appeal and held:**

**Mr Majrowski's had a cause of action under section 3 of the Protection from Harassment Act 1997 against his employer in respect of harassment by his departmental manager in breach of section 1 of the Act;**

**the judgment means that any employee will now have a cause of action (and be able to make a claim to a Court for damages) under section 3 of the Protection from Harassment Act 1997 against her or his employer in respect of *two or more* incidences of harassment by her or his manager (or colleague(s)) in breach of section 1;**

**the conduct by those bullying or harassing the victim must be serious enough to give rise to criminal proceedings under section 2 of the Act – in other words, if the conduct could not give rise to criminal proceedings under the Protection from Harassment Act 1997, it should not give rise to civil proceedings under the Act either.**

An employer can be vicariously liable for: (i) common-law wrongs (e.g. negligence); (ii) equitable wrongs (e.g. dishonesty); (iii) statutory wrongs (e.g. breach of statutory duty in contravention of Acts of Parliament such as the breach of a range of anti-discrimination statutory legislation as well as many other legislative provisions).

**Where one incidence of harassment arises from racial discrimination (or other kinds of discrimination), the Employment Appeal Tribunal has said that employment tribunals should ignore precedents set in harassment cases that pre-date the introduction in 2003 of new definitions from an EU Directive, in that rulings from the era of the older law stemming from discrimination legislation were not helpful. The EAT added that: *'Still less assistance is likely to be gained from the entirely separate provisions of the Protection from Harassment Act 1997 and the associated case law.'***

The law now states that harassment occurs if it has the 'purpose or effect' of violating a person's dignity or creating an intimidating atmosphere. In *Richmond Pharmacology v Dhaliwal* (2009), the EAT said: *'That means that a respondent may be held liable on the basis that the effect of his conduct has been to produce the proscribed consequences even if that was not his purpose; and, conversely, that he may be liable if he acted for the purposes of producing the proscribed consequences but did not in fact do so.'*

**Harassment occurs, then, if the perpetrator means it to, or if the offended person feels that it has occurred. The EAT pointed out, though, that any feeling of being harassed must be considered objectively to be reasonable, based on the offending behaviour.**

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