



HR Briefing

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Bullied workers given wider scope to sue employers...

Two key cases are set to thrust bullying and harassment at work into the spotlight. The cases highlight the risk of an Employer "carrying the can" for the behaviour of its staff towards one another. In one case, an Employer was ordered to pay over £800,000 in damages.

Majrowski case

The Protection from Harassment Act 1997 ("the Act") was aimed amongst other things, at stalkers and animal rights activists. It was not thought that the Act would have a big effect in the workplace.

In the **Majrowski** case, the claimant alleged that his manager had bullied, intimidated and harassed him. He issued proceedings under the Act. Apart from suing the manager concerned, he also sued his Employer arguing that his Employer was also liable under the Act for the harassment perpetrated by its employee.

The Court initially disallowed the claim against the Employer on the basis that the Act only applied to the actual "harasser" and not Employers. However, the House of Lords has now held that an Employer is liable under the Act for harassment carried out by its employees during the "course of their employment".

Whilst, most Employers would no doubt argue that the scope of their employee's "employment" does not include the harassment of other staff, this will not normally be a defence. In essence, the Employer potentially "picks up the tab" if the harassment is carried out at work, whether it knew of it, or not.

This raises a number of concerns for employers. Previously, to succeed with harassment claims, the employee had to sue under the discrimination legislation. This had a number of drawbacks for employees, including the fact that they had to link the claim to discrimination, that the employer had the potential defence that it had taken "reasonably practicable steps" to prevent the discrimination occurring, and also the short time limit in which such claims can be brought (three months).

None of these "drawbacks" are applicable to claims of harassment brought under the Act, and therefore employees who feel that they have been bullied and harassed at work now have much greater scope to sue their employers.

Key recommendations

- Make sure staff are aware that offensive, abusive, bullying, patronising or insulting words or behavior will not be tolerated.
- Ensure that your organisation can demonstrate that it has taken steps to outlaw this behaviour in the workplace
- Check your documentation. Does your staff handbook contain a bullying and harassment policy?
- Training is critical. Can you demonstrate that your staff are clear as to what is and is not appropriate behaviour?
- Tell your managers to be vigilant, and to report to senior management cases of suspected bullying and harassment.
- Ensure that you have a track record of being seen to deal with cases of bullying in accordance with your internal procedures.

Deutsche Bank case

In this case, a city bank has been ordered to pay in the region of £817,000 in damages, for turning a blind eye to the bullying endured by the claimant during her employment. The claimant was not a high earner, but a substantial sum was awarded for “future loss of earnings”, on the basis that it was unlikely that the claimant would be able to work in the City again.

The claimant suffered a nervous breakdown after being targeted by four female colleagues who had subjected her to ‘offensive, abusive, denigrating, bullying, humiliating, patronising and insulting words and behaviour’. The bullying continued until it got to the point where the claimant would sit at her desk and cry. Other Colleagues told her that it had happened before and it would all “pass”.

The Judge found that ‘bullying in the department was a longstanding problem to which other employees had fallen victim, but the bank’s management was weak and ineffectual’. He continued to say ‘the managers collectively closed their eyes to what was going on, no doubt in the hope that the problem would go away’.

These cases serve to illustrate that importance of sending the message to staff that bullying, harassment and other inappropriate behaviour will not be tolerated. If it is, employers do so with the increased risk that ultimately they may be found to be liable to compensate the employee in damages.

To discuss how Berg Legal can assist you with these issues, please contact either **Alison Loveday** at alisonl@berg.co.uk or **Lee Jefcott** at leej@berg.co.uk. Alternatively you can call Alison or Lee on **0161 833 9211**.

berg legal scottish mutual house 35 peter street manchester m2 5bg
t. 0161 833 9211 f. 0161 834 5566 e. help@berg.co.uk
dx 14379 manchester 1 www.berg.co.uk Regulated by the Law Society

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