

LEGAL UPDATE

Edition 5

On behalf of all of us at McKay Norwell, we hope you all had a great Christmas, and are now embarking on a Happy New Year. 2009 was a year many of us were glad to be done with, so let's hope for better things in 2010.

Our first newsletter of 2010 deals with a distinctly unfestive subject, but from the amount of enquiries we get, it seems to be an unwelcome part of a large number of people's lives.

Bullying at Work – a big underlying problem

Shortly before Christmas the press reported what can only be described as a humdinger of a harassment case before an employment tribunal.

What made this one stand out was not only that the alleged 'bullying boss' was a woman, and the complainant a man, but that she had once been invited by Tony Blair, during his spell as Prime Minister, to head a task force set up to promote women in business. That, and the revelation made in court that this boss from hell had gone through 27 personal assistants in two years!

We can fully understand why a newspaper would want to give a lot of space to a story such as this and for many readers to lap it up. Unfortunately, it might also have given the impression that harassment, or 'bullying' in the workplace is a relatively rare occurrence and that when it does happen, the circumstances are unusual and, therefore, newsworthy.

Of course, not every employee who claims to be bullied is, in fact, the subject of what might be termed 'harassment'. Cultures in the hundreds of thousands of workplaces across the country vary enormously and instructions by managers that might be seen as 'the norm' in the private sector could be considered 'unfair' in a public sector organisation. And, let's be honest, in any working environment you will always find people who are just not up to the job and for whom 'bullying' is a convenient fallback.

Having said that, our experience is that harassment of employees is relatively common in the Scottish workplace. People are being bullied in offices, shops and factories across the country – not just in an abstract sense but also in clear contravention of the 1997 Employment Act, which greatly concentrates on this issue.

When clients initially approach us with a workplace bullying issue, it is usually because

they have failed to obtain satisfaction through discussions with their employer, either on their own or with a trade union representative. Unfortunately, 'talking' does not always lead to a resolution. For example, the employer might think it's not his problem and prefer to leave it to a manager further down the line, someone with only limited powers. Or the employer might agree that harassment is taking place – but for the sake of a quiet life would prefer the victim to leave rather than do anything about his or her tormentor.

That's when many people feel they have no option but recourse to law – but because the harassment is 'low level' (though still unsettling for anyone on the receiving end), this rarely makes it onto the pages of newspapers.

There are, of course, those for whom going to law is even more daunting than setting off for work every day to face a bullying foreman or line manager, and so they are tempted to resign, look for a job elsewhere, and move on. But there is always the danger that in doing so, they will be affected by a burning resentment that negates living a normal life – no matter how hard they try. There is that nagging feeling that they've been denied justice – i.e. that a workplace which allows bullying has got away with it.

Fortunately, those who do contact a solicitor with a complaint about workplace harassment are often surprised and encouraged by how much the law is on their side. Here are some extracts from the 1997 Act:

" Every individual has a right to be free from harassment and, accordingly, a person must not pursue a course of conduct which amounts to harassment of another....".

"An actual or apprehended breach may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question; and any such claim shall be known as an action of harassment".

We don't believe you need to be a lawyer to take a clear inference from these words. They mean that harassing (or permitting the harassment of) an employee in the workplace either through inappropriate forms of speech or physical conduct is against the law and that anyone on the receiving end of such behaviour has a legal right to seek compensation.

Although there are myriad cases of bullying and each is different in its own way, the law is pretty clear that anyone who has lost a job or been compelled to resign because of harassment does have access to justice. If you are – or know someone who is – in this category then please contact us for an initial discussion, without obligation, with a member of our experienced employment team.

The Christmas cards we received from clients last year contained an unusually large number of lawyer jokes. Were you trying to tell us something? This was our personal favourite. If only it were true!

