



A guide to employment law from



WHISKERS LLP
SOLICITORS & NOTARIES

HARASSMENT CLAIMS MUST BE 'WORTH THE CANDLE'

There is no law in the UK that specifically protects against bullying in the workplace but an employee who is bullied or victimised can bring a claim for damages against their employer, under the Protection from Harassment Act 1997 (PFHA), on the basis that the employer is vicariously liable for the actions of its employees.

The Civil Procedure Rules permit the striking out of a claim or allow a defendant to seek summary judgment against the claimant where it can be shown that the claim has no real prospect of success.

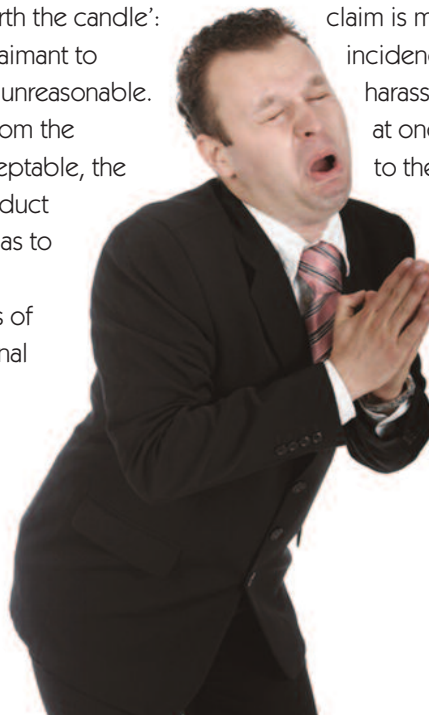
In *Dowson and others v Northumbria Police*, the judge's reasons for striking out three of nine claims brought under the PFHA provided guidance on the essential elements necessary for a claim to succeed.

The following principles are relevant when scrutinising claims of harassment to see whether or not they are 'worth the candle':

- ? It is incumbent on the claimant to allege conduct which is unreasonable. To cross the boundary from the regrettable to the unacceptable, the gravity of the misconduct must be such as to justify the sanctions of the criminal law;

- ? The mere fact that the conduct complained of has foreseeably caused distress to an individual is not enough. The conduct must be calculated to produce alarm and distress. The requirement to establish an arguable case of oppression and unreasonableness must also be satisfied
- ? There must be a genuinely offensive and oppressive course of conduct. A complaint will fail if there is only a single instance of the conduct complained of;
- ? The context in which the conduct occurs may well be important. What might be deemed harassment in one workplace might not be in another; and
- ? The conduct must be targeted at the claimant. The statutory defence that they took all reasonable steps to prevent the harassment is not available to employers when a claim is made under the PFHA. Any incidence of workplace bullying or harassment should be dealt with at once, to the

satisfaction of the alleged victim.



AUTUMN 2009

IN BRIEF

NEW MINIMUM WAGE RATES

The Government has announced new National Minimum Wage rates that will apply from 1 October 2009. For workers aged 22 and over, the rate will increase from £5.73 to £5.80 an hour. The rate for 18- to 21-year-olds will rise from £4.77 to £4.83 and for 16- and 17-year-olds the rate will increase from £3.53 an hour to £3.57. From the same date, the accommodation offset will rise from £4.46 per day to £4.51.

UK OPT-OUT TO REMAIN IN PLACE

The European Parliament and Council have failed to reach agreement on the revised Working Time Directive. Since there is no agreement, the current Directive remains in force, which means that the UK's opt-out of the 48-hour weekly limit remains in place. Employers are reminded that workers who opt to work more than an average of 48 hours a week over a 17 week period must sign individual opt-out agreements and a worker who does not wish to opt out must not suffer any penalty as a result.



Employment ACT NOW



PART-TIME WORKERS – NO HYPOTHETICAL COMPARATORS

The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (PTWR) established a minimum standard of fairness for part-timers so that they have the right not to be treated less favourably than comparable full-time co-workers if the treatment is on the ground that they are part-time and cannot be justified on objective grounds.

A comparable full-time worker must work in the same establishment, be engaged in broadly similar work and work under the same type of contract. In *Carl v University of Sheffield*, the Employment Appeal Tribunal (EAT) held that when a claim is made under the PTWR, comparison must be made with an actual full-time worker, not a hypothetical comparator. In addition, for

a claim to succeed, part-time status need not be the sole ground for the less favourable treatment complained of. In the EAT's view, part-time work must be the effective and predominant cause

of the less favourable treatment complained of but it need not be the only cause.

Contact us if you would like advice on any contractual matter.



LONG-TERM SICK LEAVE – NON-PAYMENT OF HOLIDAY PAY

Following the ruling of the European Court of Justice that the right to take statutory paid holiday is not extinguished if an employee is on long-term sick leave, the House of Lords has held (*Stringer and others v HM Revenue and Customs*) that holiday pay does count as wages and, where it has not been paid, a claim can be brought for unlawful deduction from wages under the Employment Rights Act 1996.

This decision means that if it can be shown that the claim is part of a series of unlawful deductions then, provided a claim is brought within three months of the last deduction, there is no time limit on how far back the claim can go. This decision opens the way for backdated claims by employees on long-term sick leave who have been denied their entitlement to paid holiday. Employers are advised to seek advice when dealing with this complex issue.

Immigration and TUPE – Guidance on Notification Requirements

The UK Border Agency has issued revised guidance on an employer's obligation to notify it when a migrant worker from outside the European Economic Area is transferred to a new employer under the Transfer of

Undertakings (Protection of Employment) Regulations 2006 (TUPE). The guidance can be found at <http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/applyforlicence/typeoforganisation/sponsortakeovers/>.



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