

How to Manage Staff without Conflict

The manager's behaviour: Stress, Conflict, bullying, Discrimination (p2)

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Check whether someone has a claim against you because of your behaviour as an employer/supervisor

Occupational stress – is the normal tension from meeting deadlines and decision making etc. that we expect when we are carrying out our work – it is not the basis for any claim against an employer;

Workplace Stress – is where there are excessive, damaging but avoidable psychological demands made upon employees. Employers have a duty to think about work routines to avoid unnecessary stress and are negligent if they do not. This can lead to a personal injury claim. Employers should listen to complaints of stress and act to remove the source of the stress by re-organising work.

Workplace Bullying – is, repeated and inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work. Bullying...involves a deliberate and repeated course of action designed to humiliate and belittle the victim. It is conduct which is intended to reduce that person's sense of self-worth. A single incident may be an affront to dignity at work but, as a once off event is not considered to be bullying.

Victimisation –is deliberately putting someone at a disadvantage to punish them for making a legal claim or other complaint against the employer. Victimisation is forbidden under many employment statutes and will lead to markedly higher awards than normal under such Acts as the Unfair Dismissals Act and the Employment Equality Act.

Discrimination - Is: “treating some people differently from others in a comparable situation”. It is lawful when you have an acceptable business reason for discriminating (for example requiring a female actor for a female movie role). It is unlawful when it disadvantages a worker under any of the nine categories of discrimination compared with others in a comparable position and it is done for reasons that are irrelevant to work.

Direct Discrimination – is openly and deliberately basing a decision on one of the nine prohibited grounds of discrimination which disadvantages a person in comparison with others in a comparable position;

Indirect discrimination – is an apparently neutral rule, action or decision which indirectly puts someone at a disadvantage in comparison with others in a comparable position under one of the nine grounds of discrimination. It is a defence that the rule, act or decision was objectively justified by a legitimate business aim. However, the employer must show that the rule, action or decision was necessary and appropriate in the circumstances. Where there were alternatives that would have avoided discrimination they must be chosen first unless it would have been unusually expensive or problematic for the business. This may apply even when the rule action or decision was made or done inadvertently or in good faith. An example of indirect discrimination would be where the working hours of all staff were changed ignoring the fact that females are more likely to have child care roles requiring them to be home at particular times of the day. Whilst there is no law to say that women have primary responsibility for children, a case for gender discrimination could arise because women are statistically more likely to be disadvantaged compared with men in a similar position. The employer should use common knowledge when assessing whether indirect discrimination is likely to occur.

The nine prohibited grounds of discrimination are:

- **family status**, (pregnant, parent or resident primary carer)
- **Gender**: (male, female, transsexual, transgendered)
- **marital status**, (single, married, separated, divorced, widowed)
- **sexual orientation**, (heterosexual, gay, lesbian or bisexual)
- **religious belief** (or none),
- **age**,
- **disability**, (including people with physical, intellectual, learning, cognitive or emotional disability)
- **race**, (skin colour, nationality, ethnic or national origin)
- **colour**,
- **nationality or ethnic or national origin**
- **Membership of the travelling community.**

Harassment (general) (a form of aggravated discrimination)– is behaviour which focuses unfavourably on any characteristic of an employee, customer, contractor or supplier and which makes them feel distressed, humiliated or threatened in relation to any of the nine grounds of discrimination. For example, making jokes about somebody's race, ethnic origin, nationality or the fact that they are mentally slow could constitute harassment.

Harassment (sexual) - is any act of physical intimacy, request for sexual favours or any other act or conduct including spoken words, gestures or the production, display or circulation of words, pictures or other material that is unwelcome and could reasonably be regarded as sexually offensive,

humiliating or intimidating. It is enough that the victim says that the behaviour was unwelcome – what the perpetrator intended is not considered by the law in deciding whether harassment took place. It is not a defence to say “I did not realise” or “I did not mean it”. Unlike bullying which must be done more than once to be considered as an offense, a single incident of this nature may constitute sexual harassment. The victim does not need to prove damage or financial loss to be successful in a claim.

2 Additional headings of discrimination: Fixed Term Workers and Part Time Workers

Part Time Workers – must have all the same terms and conditions as full time workers. You cannot use the fact that someone is a part time worker to give them a different pay rate for example or to select them for redundancy over full time workers. You may have other reasons for making a difference between them, such as part time workers not having the necessary qualifications which full time workers may have and these may be objective and allowable reasons for making a difference between full time and part time workers. You are not allowed to make a difference simply **because** people are part time workers. Of course, holidays and pay etc. are given in proportion to the percentage of work done in comparison with full time workers although the hourly rate may be the same.

Fixed Term Contract workers – these are workers who work for a fixed period of time (say a one year contract) or to fulfil a particular need (e.g. to cover for someone on maternity, sick or study leave) where it is agreed in advance that their contract will end at a particular date or when a particular event happens (such as the person they are covering for returning after maternity leave, study leave or sick leave). It is presumed in law that all workers will automatically get an open ended long term contract so the employer has to have a legitimate business reason to demonstrate why it is **appropriate** and **necessary** to give a fixed term contract at the outset rather than an ordinary open ended contract.

The dos and don'ts of the Disciplinary/ Dismissal/Resignations

Warnings –

Verbal warnings have little legal value and are mostly ignored by tribunals - use them only if you think the person will respond and end their offending activity without more action needed from you.

Written warnings are the only recognised type of warning in the legal disciplinary process as they can be presented as evidence in defence of the employer. However, the only time a warning has been correctly given is after the worker was put through a proper disciplinary process with representation and a right to reply and appeal (see below).

Warnings must be for a limited time only and it must state in the written warning that it shall last for no more than 12 months. Once a warning has expired it cannot be relied upon to bring the employee to stage two of any disciplinary process. If the employee re-offends after the warning has expired the employer must start from scratch and issue a new stage one warning.

A valid disciplinary-

- The disciplinary rules must be set out in the contract of employment or handbook when the employee starts employment. They must be forewarned of the types of behaviour which could result in discipline or dismissal.

- If the employee breaks a rule they should be invited to a hearing in writing. The invitation should include:
 - a) A summary of the circumstances and events to be examined;
 - b) An exact written charge that they have to answer (with reference to the handbook list of offences);
 - c) An explanation of what the consequences will be if the decision goes against them (e.g. dismissal, final written warning etc.);
 - d) Copies of any evidence or statements made by others ahead of the hearing;
 - e) A statement informing them that they have a right to be represented by a trade union official or fellow employee if they wish. Individuals are entitled to this regardless of whether the employer engages in collective bargaining or recognises unions. Employees do not have a right to be represented by a solicitor;
 - f) A statement informing them that they can ask for a translator in good time for the hearing or to get documents translated if they wish;
 - g) A statement informing them that they will have a right of appeal if the decision goes against them.
- The accused or their representative has the right to cross examine any witness or person accusing them;
- If it is decided after a hearing that a sanction or dismissal will be applied, the employee must receive the reasoning for the decision in writing so that they can appeal it if necessary;

- If there is an appeal the matter is heard from scratch. If it is practical to get someone who was not involved in making the original decision to hear the appeal this is preferable.
- Any person who may have been involved in the incident in question should not be the decision maker. A person independent of the event should be chosen to give an objective view.

How to Handle Resignations

Resignations: (where the employee rather than the employer ends the employment contract)

- **Never** suggest to an employee that it would be better for them to resign. The idea must be their own;
- **Never** accept a resignation until you get written confirmation from the employee that they have no grievances or unresolved issues with the employer and that they confirm the reason for the resignation is unrelated to a work complaint;
- **Always** insist in writing that they take independent advice on the matter;
- **Always** make sure a foreign national has translations of your letters regarding resignation in their own language;
- **Always** allow at least a one week cooling off period when you allow the employee to change their mind. A resignation, once offered by the employee, is not a valid resignation until accepted by the

employer. Use the week to get the above confirmations from the employee so that you are sure you are protected;

- **Always** refuse a resignation if the employee does not confirm that they have no grievance. If they admit they have a complaint, inform them that they still work for you and invite them to use the grievance procedure. If there are outstanding disciplinary matters invite them to a disciplinary as normal. If they do not turn up for a disciplinary take legal advice on whether you can simply leave them on the books indefinitely without pay until the matter is resolved or proceed with the disciplinary.

Performance Appraisals

Performance Appraisals – an exchange of feedback about each other – not a one way lecture criticising the employee.

- ☐ Create receptive mood -Ask them to **critique you first**
- ☐ Always do it in **private**
- ☐ Start with **what they did right** or a kind word of understanding
 - Make a **list of 10 positive things** about the person before the meeting so that they are in your mind;
- ☐ Ask them **how they think they did** – before you provide assessment let them score themselves rather than provide a company score.
- ☐ **Praise the act not the person** – depersonalise the discussion
- ☐ **Criticise the act not the person** –depersonalise the discussion

- ☐ Phrase the **criticism as a question** not a statement “do you think that was the best way to deal with that task? Or “Was there a better way to deal with that?”
- ☐ **Ask them what they would do** if they were in your shoes looking at how they performed
- ☐ **Critique to correct** them only – **not to punish** or vent your feelings
 - Only tell them what is wrong if you also **show what is right**
- ☐ **Criticise only once**
- ☐ Set a **target for improvement**
- ☐ Set a **date to check** improvement
- ☐ Ask for **agreement on the action plan** – do not threaten or demand
- ☐ **Finish on a friendly note**

Common Errors in giving Performance Appraisals

- ☐ **No preparation** – need hard facts and figures and feedback from others before meeting
- ☐ Avoiding the issue by **pretending everything ok** – too lenient
- ☐ **Overemphasising short term errors** forgetting long term performance – too tough
- ☐ **Focus on past performance** rather than future performance
- ☐ **Halo effect** – giving people high ratings on all areas because they are good at most things – shortcomings should be distinguished regardless of merit elsewhere
- ☐ **Central tendency** – lumping everyone around the average and comparing them with others instead of looking at the individual and what is causing the deficiency;

- ☐ **One-sided Blame rather than joint problem solving** need to discuss what the employer can do to assist improvement;
- ☐ **Approving of people who are like you** – appreciate different talents and understand that the most effective teams usually have multiple talents and constructive debates and differences of opinions;
- ☐ **NOT LISTENING TO FEEDBACK**
 - ☐ **Repeat what they said** in your own words
 - ☐ **Tell them** what **your reaction is** to what they said
 - ☐ **Follow up** with a letter elaborating on your thoughts and suggestions and confirming what was discussed
- ☐ **RATING PEOPLE AGAINST OTHERS IN A SCALE**
- ☐ **The only competition is with your own shortcomings** – you can only change what you do, you cannot change what others do.

Performance Appraisal Template (job title)

Employee name..... Work Location..... Date / /
Position.....

Employee assesses themselves and fills in their own score 1 = poor 5 = excellent

<u>Health and Safety</u>	<u>grade</u>	<u>Action required</u>	<u>by</u>
<u>date</u>			
Wearing PPE	1 2 3 4 5		
Tidy Working	1 2 3 4 5		
Care with Equipment	1 2 3 4 5		
Carefulness	1 2 3 4 5		
Attention to Instructions	1 2 3 4 5		
Paperwork completion	1 2 3 4 5		
Anticipating dangers	1 2 3 4 5		
Reporting potential problems	1 2 3 4 5		
Incident reporting	1 2 3 4 5		
Procedures followed	1 2 3 4 5		

Well done

Areas for improvement-targets

<u>Operational Standards</u>	<u>grade</u>	<u>Action required</u>	<u>by date</u>
Tidy finishing of work	1 2 3 4 5		
Productivity	1 2 3 4 5		
Timekeeping	1 2 3 4 5		
Absenteeism	1 2 3 4 5		
Adhere job specification	1 2 3 4 5		
Careful driving	1 2 3 4 5		
Photographic record	1 2 3 4 5		
Tools stored	1 2 3 4 5		
Maintenance Equipment	1 2 3 4 5		

Well done

Areas for improvement-targets

<u>Health</u> <u>date</u>	<u>grade</u>	<u>Action required</u>	<u>by</u>
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Stamina	1	2	3	4	5
Eyesight	1	2	3	4	5
Lifting Loads	1	2	3	4	5
Injuries Issues	1	2	3	4	5

Satisfactory

Areas needing attention

Personal performance	grade	Action required				by date
Problem solving	1 2 3 4 5					
Working as team	1 2 3 4 5					
Productivity	1 2 3 4 5					
Flexibility	1 2 3 4 5					
Co-operation with supervisors	1 2 3 4 5					
Reporting accuracy	1 2 3 4 5					
Relationship with staff	1 2 3 4 5					
Initiative	1 2 3 4 5					
Appearance	1 2 3 4 5					
Relationship customers	1 2 3 4 5					
Commitment/enthusiasm	1 2 3 4 5					
Forward planning	1 2 3 4 5					

Well done

Areas for improvement-targets

YOUR OBJECTIVES FOR THE NEXT SIX MONTHS

**YOUR SUGGESTIONS REGARDING AREAS WHERE THE COMPANY
NEEDS TO IMPROVE.**

**WHAT ARE YOUR PERSONAL IMPROVEMENT OBJECTIVES FOR THE
NEXT 6 MONTHS – TRAINING - RELATIONSHIPS ETC.**

Agreed (Supervisor) Date / /
Agreed (employee) Date / /
Date of next review Date / /

