

Simon Dewsbury [Thompsons] Presentation slides

Bullying, Harassment, Occupational Stress



Three separate areas relevant to bullying under the law at work



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- Employment Tribunal Claims

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- Employment Tribunal Claims
- 'Common Law' negligence claims

Three separate areas relevant to bullying under the law at work



- Employment Tribunal Claims
- 'Common Law' negligence claims
- Protection from Harassment Act 1997

Employment Tribunal Cases



- Cases where there is bullying or harassment against an individual who is part of a particular group *and* the harassment is because of a discriminatory reason

Employment Tribunal Cases



- Applies to employees who are harassed on grounds of sex, race, religion or belief, sexual orientation or age

Employment Tribunal Cases



- Remedy : a claim for damages via an Employment Tribunal

Employment Tribunal Cases



- Defence – ‘reasonable practicability’

Employment Tribunal Cases



- **Time limits** – 3 months (or 6 months if a grievance has been raised under the Dispute Resolution Regulations)

Employment Tribunal Cases



- What about the rest of the workforce?

‘Common law’ negligence



'Common law' negligence



- Negligence claim for personal injury

'Common law' negligence



- Negligence claim for personal injury
- very difficult to prove

'Common law' negligence



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- very difficult to prove
- *Hatton v Sutherland*

'Common law' negligence



Factors needed to succeed with an occupational stress negligence claim

'Common law' negligence



- Has to be an injury – ie a recognised psychiatric condition

'Common law' negligence



- Has to be an injury – ie a recognised psychiatric condition
- Has to be clear foreseeability that the bullying would cause an injury – distress is not enough

'Common law' negligence



- Has to be a breach of the employer's health and safety duties
- Breach of duties has to have caused or 'materially contributed' to the injury
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'Common law' negligence



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'Common law' negligence



- *Green V DB Group Services (Uk) Limited* [2006]

'Common law' negligence



- *Green V DB Group Services (Uk) Limited* [2006]
- recent case of *Dickens v O.2 Plc* [16/10/08]

Protection from Harassment Act 1997



Protection from Harassment Act 1997



- Purpose - anti stalking Act

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- *Majrowski v Guy's and St Thomas' NHS Trust*

Protection from Harassment Act 1997



- Purpose - anti stalking Act
- *Majrowski v Guy's and St Thomas' NHS Trust*
- Decided that the act could be used for harassment in workplace situations

Protection from Harassment Act 1997



- Why use the Protection from Harassment Act?

Protection from Harassment Act 1997



- Why use the Protection from Harassment Act?
- Advantages over common law and Employment Tribunals

Protection from Harassment Act 1997



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Protection from Harassment Act 1997



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- Enough to show the bullying has caused anxiety and stress – no need to show a recognised psychiatric injury

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- Enough to show the bullying has caused anxiety and stress – no need to show a recognised psychiatric injury
- Hence, no need to show foreseeability of psychiatric injury - emphasis is on the behaviour, not the result of the behaviour.
- No 'reasonable steps' Defence.

Protection from Harassment Act 1997



- Enough to show the bullying has caused anxiety and stress – no need to show a recognised psychiatric injury
- Hence, no need to show foreseeability of psychiatric injury - emphasis is on the behaviour, not the result of the behaviour.
- No 'reasonable steps' Defence.
- 6 year time limit to bring a claim

Protection from Harassment Act 1997



- What Has To Be Proved in a workplace case?

Protection from Harassment Act 1997



- What Has To Be Proved in a workplace case?
- There must be a course of action, not just a single incident
- There must be conduct amounting to "harassment".
- The harassment must:-
 - be targeted at the individual who is bringing the claim
 - be 'calculated' to have the effect of causing "alarm or distress" or some similar result
 - actually cause alarm and distress or some similar problem
 - be within the course of the harassing employee's employment.

Protection from Harassment Act 1997



- What amounts to 'Harassment' under the Protection from Harassment Act 1997 ?

Protection from Harassment Act 1997



- *Conn v The Council Of The City Of Sunderland [2008]*

Protection from Harassment Act 1997



- *Conn v The Council Of The City Of Sunderland [2008]*
- In essence Conn looks likely to limit the remedy for employees under the Protection from Harassment Act 1997 only to very clear and serious cases.



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