Health & Safety Group

Bullying in the Workplace and Corporate Responsibility

What is Workplace Bullying

There is no statutory definition of bullying. Bullying in the workplace has been described in various ways. The Health and Safety Authority define bullying as:

“repeated 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.”

An isolated incident of the behaviour described in this definition may constitute an affront to dignity at work but as a once off incident is not considered to be bullying.

Bullying – As a Health and Safety Issue

Employers general duties are set out in section 8 of the Safety, Health and Welfare at Work Act 2005 (the “Act”) impose a statutory duty of care on employers. This statutory duty of care extends to bullying.

Section 8 provides:

“Every employer shall ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees.”

Most (if not all) claims for personal injuries provide that the employer in its commission of the wrong:

“failed to provide a safe system of work;
failed to provide a safe place of work;
failed to take appropriate measures to avoid or reduce the risk of injury to the employee; and
breached the Safety, Health and Welfare at Work Act.”

Employees now appear to be characterising claims for damages as “damages for personal injuries, loss, damage and expense sustained by the Plaintiff as a result of the acts of bullying (including corporate bullying), and/or harassment, and/or victimisation and/or intimidation by employees of the employer and in respect of which the employer is vicariously liable.”
Personal Injuries/Work Related Stress

Health and Safety Legislation
The relevance of the health and safety legislation to a claim for occupational stress was considered by the High Court in the case of McGrath v Trintech Technologies Limited and Trintech Group Plc.

Mr. McGrath claimed damages for personal injuries which he alleged he suffered as a result of occupational stress. He argued that the defendant employer was in breach of its obligations pursuant to the Safety, Health and Welfare at Work Act 1989 and the 1993 Regulations made thereunder. Whilst Laffoy J. ultimately found against the plaintiff on this point, in principle she had no difficulty with the argument that the 1989 Act and the 1993 Regulations covered psychiatric health and psychiatric injuries. She stated:

“It is undoubtedly the case that the general duties imposed by the Act of 1989 extend to the protection of the psychiatric health of employees and comprehend the obligation to provide assistance and measures which safeguard the employee against psychiatric injury induced by the stress and pressures of the employees working conditions and work load. As is pointed out in McMahon & Binchy at p.605 (footnote 93), almost with exception, the 1993 Regulations provide “for strict and even absolute duties”. However, in a civil action the Plaintiff must establish that the injury was caused by the breach. The question which arises in this case is whether the Plaintiff has established a breach of a statutory duty in consequence of which he has suffered the injury and loss of which he complains”.

Statutory health and safety obligations were also expressly referred to in the case of Quigley v Complex Tooling and Moulding.

“It has been a fairly recent movement towards thinking that an employer must take care not only of the physical health of their employees, for example by providing safe equipment, but also must take reasonable care to protect them against mental injury, such as is complained of by the plaintiff in this case.

It follows on from this that employers now have an obligation to prevent their employees from such that would cause mental injury, i.e. stress, harassment and bullying in the workplace.”

Common law liability
The ordinary principles of liability for an injury at work apply to a claim for occupational stress, i.e. was there a duty to take care, was there a failure to take care which could reasonably be expected in the circumstances and was there damage resulting from that failure to take care.

Berber v Dunnes Stores Limited
Mr Berber was a buyer with Dunnes from 1988 to 2001, having been promoted up the ranks since he joined. Mr Berber felt the Company’s attitude had changed towards him in the months leading up to his resignation.

On 22 November 2000, Mr Berber was told he was to be transferred back down to department manager level, which he considered a demotion. He sought a meeting with Mrs Heffernan (Dunnes Stores), which took place the following day. It was agreed that he would be transferred to their flagship Blanchardstown store, trained and fast-tracked for store or regional manager in the next 6-12 months.

Mr Berber understood he would be reporting for work in the ladieswear department but was told to turn up at the homewares department, one week earlier than expected. He considered this a variation of the agreement and tried unsuccessfully to meet again with Mrs Heffernan, who was abroad. Instead he held two meetings with the store manager. Dunnes Stores allege that Mr Berber behaved inappropriately and aggressively at these meetings. Mr Berber was then suspended with pay.

After an exchange of letters, the Company indicated that they were prepared to overlook Mr Berber’s actions and lift the suspension provided he reported for work once certified fit to return (he was off due to an exacerbation of his pre-existing Crohn’s disease). A number of incidents occurred thereafter:

» he attended for work in his casual clothes and was told to wear a conservative suit and tie;
» issues relating to his bonus;
» a duty roster classified him incorrectly as a “new trainee”;
» there was an exchange of letters and a number of further meetings to try and agree an expedited timetable and appropriate training programme; and
» he had a heated altercation with the store manager in relation to an error on the roster regarding his start time.

Mr Berber constructively dismissed himself, claiming he was medically advised to do so, in May 2001 and sued the Company for “wrongful dismissal arising out of a breach of trust and confidence” and also sued for damages for injuries caused by the actions of the employer.

The Supreme Court in dealing with the personal injury aspect of Mr Berber’s case found that causation was not an issue – the injuries were caused by the various incidents in the workplace – so it came down to:

» an examination of the foreseeability of the harm; and
» if harm was foreseeable, did Dunnes Stores exercise “reasonable care” in its actions.

»
In examining the various incidents, it was held that each incident failed the test of foreseeability and that the Company has acted reasonably at all times. As the injury sustained by Mr Berber was deemed unforeseeable, his claim for breach of duty failed.

**Corporate Bullying – A New Departure?**

The plaintiff in *Margaret Kelly v Bon Secours Health System Limited* commenced proceedings by personal injury summons claiming damages for injury, loss and damage caused by an accident at work, and also alleging harassment, bullying, abuse, intimidation and discrimination in the course of her employment with the defendants. The High Court found she was entitled to succeed in relation to the first aspect of her case; the decision is notable for what the Court said about the claim of bullying and harassment which it acknowledged was part of the employer’s duty of care. The employers’ conduct was strongly criticised by the Court on a number of matters such as the alteration of normal work practices to open a permanent position to “outside candidates” to the detriment of Ms Kelly, and the interference with the existing mediation procedures by the defendant. The Court found that the procedures adopted by the hospital in this instance amounted to “corporate bullying and harassment and discrimination against the plaintiff and resulted in stress to her.”

The High Court accepted Ms Kelly’s view was coloured by her personality and that she was clearly a person subject to stress but the defendants “were or ought to have been aware of this fact from a very early stage as they knew her history” with a previous employer, and also her marital background.

Accordingly, Bon Secours were found to be prima facie liable for the alleged bullying and harassment of Ms Kelly insofar as she had suffered an actionable injury as a result. The Court rejected the employer’s defences inter alia of contributory negligence against Ms Kelly and in particular that she failed to involve herself in its grievance procedure and to engage with them. On damages, the Court said that although any assessment of Ms Kelly must conclude that she had come to the view, wrongly, that all the actions of Bon Secours were motivated by some malice against her, it was clear that at management level they were motivated by hostility to her stemming initially from the time of her accident. As the trust between the parties had irretrievably broken down, and Ms Kelly would not be likely to return to work, the court ordered a decree totalling €90,000.

**Constructive Dismissal**

Constructive dismissal arises where an employee involuntarily resigns from their employment, with or without providing the requisite notice to the employer. The resignation is classified as involuntary as it arises as a consequence of the unreasonable behaviour of the employer.

Section 1 of the Unfair Dismissals Act defines constructive dismissal as:

> “the termination by the employee of his contract of employment with his employer, whether prior notice of the termination was or was not given to the employer, in circumstances in which, because of the conduct of the employer, the employee was or would have been entitled, or it was or would have been reasonable for the employee, to terminate the contract of employment without giving prior notice of the termination to the employer...”


Ms Allen was a crime correspondent with independent newspapers from 1996 until she resigned in September 200. The issue in this case was harassment and bullying, isolation at work and that the conduct of Independent Newspapers undermined her confidence and health. It was held that it was reasonable in all the circumstances from Ms Allen to terminate her employment. The Tribunal found that it was reasonable for Ms Allen to have no confidence in her employer’s ability to properly or effectively address her grievances.

Ms Allen was awarded 78 weeks pays as compensation.

**Recommendations**

» Employers should take regular measures to ensure that it is well placed to discharge its duties as they relate to bullying (and indeed harassment).

» Policies should be reviewed regularly and managers should be briefed on their obligations in implementing the policies. Human Resources personnel (where available) should be readily available to provide support to staff (both complainants and the alleged bully).

» Where there is a suspicion of work related stress/illness employees should be referred for medical assessment to ascertain fitness to work.

» If the Company has an employee assistance programme, this support should be offered.

» Where a personal injury/stress claim is received it should immediately referred to the Company’s insurers.
Who can you contact?
For further information on our Health & Safety practice or specific advice on any aspect of health & safety law, please contact:

Kevin Langford  
Partner  
+353 (0)1 618 0588  
kevin.langford@arthurcox.com

Louise O’Byrne  
Associate  
+353 (0)1 618 0526  
louise.o Byrne@arthurcox.com