

27April 2023

# Weekly Blog

By EmmaTice



I'M LATE! I'M LATE!

For a very important date!

No time to say "hello", "goodbye"! I'm late! I'm late!

Is it that time of week again already? AKA my favourite time of the week: weekly blog time! I love it because it gives you guys a chance to get to know us all a bit better and for us to share our thoughts on what's hot and what's not in employment law with you. It's perfect if you ask me!

I was having a little think about what I could tell you about myself and well... I mean, it's Thursday and this was my week for the blog...so I am late! I am ALWAYS late. I actually have a pathological fear of being early. The Mum running up to school – that's me. The person flying through the door of the supermarket just before it closes – that's me. The person who is almost always 1 or 2 minutes late to any meeting – you guessed it...yep, that is me!! For those of you who have joined us at our events (which, incidentally, I am never late for, although did once tear my calf running upstairs to get the heater to ensure I wasn't late, resulting 5 weeks on crutches and much pain and physio...you see being on time is dangerous!), you will know that I refuse to start on time because I feel the need to protect my fellow kindred spirits!

So, it is very apt that you guys are getting my blog on a Thursday! But we all know that towards the end of the week we may lag a bit, so grab a brew (for me it is always strong black coffee) and maybe even a biscuit or too (hobnob for me every time) and have a read..... This is where I am supposed to start the blog and tell you a bit more about me. However, I kind of think I may have overshared already!

So, enough about me! If you think back to Philip Pearson-Batt's blog post a couple of weeks ago, he mentioned his love of American politics (yawn). That's something that Rob Tice is into as well (double yawn). Me, not so much. Anything horse related? I'm your girl. Anything House of Commons related? It's all just a bit too much isn't it? BUT even I couldn't miss one of the big headlines last week!

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Naughty Mr Dominic Raab had to resign from his job as Deputy Prime Minister and Secretary of State for Justice after a barrister's report found he'd "acted in a manner which was intimidating in the sense of going further than was necessary or appropriate in delivering critical feedback, and also insulting, in the sense of making unconstructive critical comments about the quality of work done." In other words, the barrister thought Dominic Raab had bullied staff.

I can hear you now: that's great Emma but I don't run a government department & I'm fed up of hearing about this blimming government – what does this all mean for me? Well let me tell you!

This latest political drama throws up a really important issue that you're going to want to get your head around because it could easily impact you.

What constitutes bullying in the workplace?

It's the age old question.

Some employees throw the word about like confetti at a wedding, thinking that it will help them avoid genuine and reasonable conversations about their inappropriate behaviour or underperformance. BUT that just is not the case.

Rather unhelpfully, there's no legal definition of bullying and so you kind of have to take a common-sense approach. Generally though, to constitute bullying somebody's behaviour needs to go so far as to be:

- offensive, intimidating, malicious or insulting or
- an abuse or misuse of power that undermines, humiliates, or causes physical or emotional harm to someone

So says ACAS (thanks ACAS!)

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You can see can't you, how for something to constitute bullying, it has to go beyond reasonably having a conversation with somebody because they're not behaving or performing as you might expect them to?

In fact, examples of bullying might include:

- spreading malicious rumours;
- speaking down to somebody in meetings or other public spaces;
- giving somebody a heavier workload than others;
- putting humiliating, offensive or threatening comments on the intranet or social media posts.

So, what do you do if somebody does raise concerns that they're being bullied?

Well, first and foremost treat the concerns seriously. If you don't you could be exposing yourself to potential Tribunal claims. Remember you're required to act reasonably (an employment lawyers absolute favourite word!) as an employer and failing to properly deal with allegations of bullying is unlikely to be that reasonable. That might give the employee raising the concerns a chance to say you've breached the implied contractual term of mutual trust and confidence. They could then resign in response and try to bring a claim for constructive dismissal: we don't want that!

Investigate any concerns raised. Where they're raised without any sort of other processes running along in the background, follow your normal grievance processes and if you do find there has been bullying, disciplinary processes should be started. Top tip: you can use the grievance investigation to form the basis of your disciplinary investigation – there's no need to duplicate work.

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Where concerns are raised by an employee going through a disciplinary process as part of their defence, you should pause the disciplinary process to properly investigate the allegations of bullying. If you're satisfied it's just a deflection technique you can address this in any disciplinary outcome letter, giving a clear explanation as to why you think it's just a deflection technique. If, however, the concerns raised are genuine, this should be factored into your decision making in terms of the disciplinary sanction and you should also look at starting separate disciplinary processes for the alleged bully.

Beyond that, you should make sure you have robust policies and processes in place to deal with bullying and you should make sure staff are properly trained on those policies and processes. There is absolutely no point in just having policies in place willy-nilly. You've got to make sure your staff know what they say and what they should do if they think they've witnessed or been subject to bullying.

Crikey, it can get messy. And it doesn't help that it's such a nuanced topic with lots of grey areas. That's where we can help you. Precept are used to dealing with bullies. We'll stand up for you and for your business and make sure you get things right. If you're worried there might be some bullies lurking around your workplace or just want to make sure you're set up to deal with any concerns that may arise, give us a call. We are here to help!