

Poor Attitude in the Workplace – Legal Issues

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04 December 2019

Poor Attitude

- How much do you need to put up with before dismissing an employee for persistently poor attitude e.g. lack of care, ignoring manager requests, undermining others, poor team relationships?

Why actively manage performance/including attitude?

- Improve the efficiency and effectiveness of the organisation
- Increases morale
- Keeps employee and manager on the “same page”



Be Specific

- “*Poor attitude*” sounds like a personality trait
- Personality is not a fair reason for dismissal although it can manifest itself in a way that can bring it within the “*conduct*” category

Perkin v St George’s Health Care NHS Trust 2006 ICR 617

- Personality can manifest itself in such a way that it damages the employer’s trust and confidence in the employee
- Issues relating to his management style and ability to form the necessary quality of relationships with colleagues
- Must identify the specific unacceptable behaviour(s) – personality alone cannot be grounds for dismissal

Identify potentially offending behaviour(s)

- Is the conduct/capability/substantial ground related?
- There may be “grey areas” such as:
 - Lack of care by a previous good performer – is it health related?
 - May be a “capability” issue
 - If an employee is overlooked for promotion and moral is impacted – this may then become a “conduct” issue

Probation – its key features

- Initial employment period is circa 6 months
- Potential extensions up to a maximum of 1 year
- Key aim: that performance, fit and conduct will be monitored particularly closely during that period
- Shorter notice period usually applies
- Keep an eye on “attitude” in this time frame

Park Hotel Case

- Dismissal during probation
- *“This can only be carried out where the employer adheres strictly to fair procedures”*
- Employee was not given:
 - any details of performance issues
 - any warning that employment was in jeopardy
 - any right to representation
 - any reasons for dismissals
 - any opportunity to reply
- Recommendation of €90,000 compensatory award

Poor attitude in work can result in eventual dismissal

Healthy Buildings (Ireland) Limited v Andrzej Gorzelak HSD114

- Attitude deteriorated after passing probation
- Complaints made about the employee's poor attitude towards work and work colleagues
- Significant difficulties in managing employee
- Verbally attacked a client, using abusive language
- Failure to take instructions and uncooperative at work
- Court satisfied there were a number of difficulties with the employee's work performance which resulted in his eventual dismissal

Poor Attitude to organisational change could be gross misconduct

Adeshina v St George's University Hospitals NHS Foundation Trust and Others [2017] EWCA Civ 257

- Employee dismissed for failing to engage with, or properly lead, a project which she opposed.
- Confrontational, rude and did not pay attention at meetings, failed to implement changes and showed hostility towards the change project.
- Various specific allegations.
- The real issue was whether the employee's attitude had been one of “**deliberate resistance**”
- Court of Appeal upheld Gross Misconduct finding.

How quickly can you dismiss poor attitude?

Will depend on the circumstances including:

- How serious is the behaviour
- Its impact on the organisation, employees and externally
- Sometimes – the seniority of the employee
- Has the employee accrued unfair dismissal protection?
- Is there a discrimination/automatically unfair dismissal risk?
- Personal or professional misconduct?

Bullying and Harassment

- Increased number of claims of bullying for routine management of employees
- Reduce risk by:
 - Objective performance review systems, i.e. PIPs
 - Involve non-direct line management in performance appraisals
 - Training of managers

Poor performance and Performance Improvement Plans (“PIPS”)

“An element of the mutual relationship of trust between an employer and employee is that the former provides constructive support to an employee where it is sought and clearly needed.”

Employment Appeals Tribunal, D1419/2013

- Informal talk/counselling to encourage improvement
- If no improvement, formal procedure – PIP
 - Costly mistake if an employer does not give an employee any chance to improve
 - ***Park Hotel, Kenmare v A Worker (2018) - €90,000***
- If PIP does not produce satisfactory results:
 - Disciplinary procedure
 - Warning/Demotion/Dismissal

Steps in a PIP

1. Meet employee
2. Clearly identify performance issues
3. Offer employee opportunity to respond/engage/seek assistance
4. Implement a PIP
 - PIP – set out clear goals/targets for employee to achieve by a certain date
 - Afford employee a reasonable period of time to improve

Steps in a PIP (continued)

5. Offer employee any additional support which can be provided (training etc.)
 - If employee raises health/personal issues – acknowledge and offer appropriate support (occupational health specialist/employee assistance programme etc.)
6. Monitor progress
7. Meet with employee to discuss progress or lack thereof
8. Allow a further period to improve
9. If no improvement – disciplinary procedure

A good PIP

Employers should:

- ✓ Outline the duration of the PIP and timeline for improvement
- ✓ State that performance will be monitored during that period
- ✓ Be very clear on expectations and standards for the role
- ✓ Have regular meetings with the employee highlighting improvements required
- ✓ Ensure that the employee knows the PIP is not a disciplinary process in itself, it is a separate preliminary process
 - ***HSE South v A Worker LCR21266***

A good PIP (continued)

- ✓ **N.B** emphasise that if the PIP is not completed successfully, the Company has the right to proceed to a disciplinary process
- ✓ Explain possible consequences of disciplinary
 - Warning
 - Demotion
 - Dismissal
- ✓ Provide the employee with a copy of its disciplinary process

Dismissal

- Unfair Dismissals Act 1977-2015 – dismissal on grounds of competence is permitted

But

- In order to demonstrate that a dismissal is fair, employer must show
 - i. it acted reasonably, i.e. dismissal was a proportionate response and justified in the circumstances
 - ii. fair procedures were adhered to (i.e. representation, appeal etc.)
 - iii. employer worked with the employee to improve performance/consulted
- Statutory Instrument 146 of 2000 The Code of Practice on Grievance and Disciplinary Procedures

Do Workplace Policies Help?

Policies such as:

- Performance Management Policy
- Bullying and Harassment Policy
- Absence Management Policy

Should be clearly communicated to employees, applied consistently and reminders circulated periodically. These can act as a “substitute warning” to problem employees

A Pharmacist v a Retail Pharmacy Group (2017)

- Procedures “*were clear and detailed and were available at all times to the complainant*”, employee had been informed of his performance issues, what was expected of him and the consequences of not achieving his PIP.
- Affords employees full and fair procedures

Legal Recourse for Alleged Mistreatment at Work

1. Employment Equality Acts 1998 – 2015
 - Employees can claim harassment and sexual harassment on one of the 9 grounds set out in the Act
2. Common law – duty of care – responsibility for mental health as well as physical well-being of employees
 - ***Quigley v Complex Tooling (2005)***
 - Excessive scrutiny and unfair/unreasonable treatment by management
 - Award of €75,000 for psychiatric injury suffered as a direct consequence of employer's breach of duty to prevent workplace bullying (overturned on appeal)
3. Safety, Health and Welfare at Work Act – Penalisation Claims

Don't jump to conclusions

- Are there any underlying reasons for the poor attitude?
 - Ill health
 - Mental health – hidden issue in difficult cases
 - Lack of capability
 - Stress (at work or otherwise)
 - Personality clash/wider problems in the team or department
- Is medical advice required?
- Is there a relevant procedure that is required to be followed?

Importance of paper trail

Biking Direct v Employee

- Employer claimed it outlined that performance was not acceptable from the start
- Employee claimed she did not realise her performance was under review or that there were any issues
- Employer could not point to any paper trail evidencing communication with the employee of performance related issues
- Recommendation of **€15,000** award

Thank you for listening

Any questions?



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