

## **“A positive attitude may not solve all your problems but it will annoy enough people to make it worth the effort” – dealing with “attitude” at work, Part 1 (UK)**

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So said German lithographer Herm Albright in a rare moment's cynicism, but of course if you really want to get on your colleagues' nerves, a hostile or negative attitude is far more to be commended.

So here is a question arising from a matter on which we were recently instructed. Client's employee has a persistently difficult attitude – rude, micro-(and indeed macro-)aggressive, sullen, lots of tutting and sighing, a distinct snippiness to his tone and all this still in his probationary period. Off to a flier, clearly. When the employer's concerns were raised with him, back came quite a lot more lip plus the assertion that it was all the product of some still unspecified mental health condition.

That may or may not be so in this particular case, but it begs a difficult question – to what extent is an employer obliged to tolerate sub-standard “attitude” in the workplace if it has or may have its origin in a disability? The issue is particularly vexed where the employee is otherwise a perfectly decent technical performer and so the employer has no road in via capability.

Two parts of the Equality Act 2010 come into play here – Section 20 (duty to make reasonable adjustments) and Section 15 (less favourable treatment on the grounds of something arising out of the disability). We need to look at each separately.

What reasonable adjustments can you make to assist someone with such a problem? None without the employee's agreement, obviously, and probably none without his also agreeing that you can tell his colleagues about it, since it is they who will likely bear the brunt of his behaviour and any accommodations you make for it. In particular, can you and must ask other employees to tolerate attitude-type behaviours which would normally be unacceptable to them just because the individual in question is unwell?

Law and practice diverge here. Paragraph 6.35 of the Equalities & Human Rights Commission Code of Practice says that “*Colleagues as well as managers may have an important role in helping ensure that a reasonable adjustment is carried out in practice*” and then that “*subject to considerations about confidentiality, employers must ensure this happens*”. “*Must*” is a very strong word, particularly when coupled with the Code's assertion that it will rarely be an excuse for not making a particular adjustment that other colleagues are unhelpful or resistant to it. The Code cautions that any such

resistance must be “*taken seriously and dealt with appropriately*”. But is this realistic? Our reactions to behaviours we perceive as hostile are immediate and instinctive (the old fight or flight issue) and not something you can easily train away or suppress just because your manager tells you to. Disciplining an employee who has reacted completely normally to the abnormal provocation of a colleague’s behaviour seems very harsh, since that reaction is no more the fault of that employee than the initial rudeness or aggression is the fault of the other one.

We have the additional problem in procuring adjustments that a disability leading to behavioural issues in the workplace is likely to be otherwise invisible. If I see a colleague with some obvious physical impairment then of course I will try to work around that, even at some minor inconvenience to myself. But otherwise I am always going to ask myself why some apparently evil-tempered but otherwise physically sound colleague is entitled to be tip-toed around almost regardless of his conduct towards me. I am not convinced that my instinctive reactions to behaviours I reasonably perceive as aggressive or rude are going to be much modified by being told that he doesn’t mean it. Requiring tolerance and forbearance is all very easy for a manager who does not have daily contact with the disabled employee, but much less so for the individual at the adjoining work station.

And aside from my staff, do I as employer have to put up with attitude-type conduct from an actually or potentially disabled employee which I would not wear if he were not? The EHRC Code tells employers that “*You must also think about whether you should make reasonable adjustments to the standards you apply to workers where those standards place disabled workers at a substantial disadvantage*”. The accompanying example talks about standards of behaviour as opposed to performance, but as there may well be only a thin line between the two, this reinforces the need to demonstrate some give in what the employer will put up with. Its harder task is to persuade the employee’s colleagues that they must demonstrate that level of tolerance also.

Next week (probably), the impact of Section 15 on handling attitude problems at work.

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