



## VICTIMISATION

"I had an employee who made a lot of trouble. She said a manager has harassed her and she began threatening to bring a claim against the company. I dealt with the manager, but I can't have employees threatening the company with litigation so I dismissed her on those grounds.

I have also now had a reference in for her from a new employer and I don't see why, given her threats, I should send a reference."

The problem with the employer's situation above is that it may give grounds for the ex-employee to make a claim of "victimisation".

In employment law "victimisation" is a very specific claim, about which many employers have limited understanding and knowledge. It does not really carry the same meaning as the ordinary English definition of victimisation. In the United States, this form of discrimination is known as "retaliation", a term which is perhaps more accurate for what is involved.

### What is "victimisation".

In summary, a claim for victimisation can be brought where an employee is subjected to any detriment from the employer because the employee has done a "protected act" or indeed the employer believes that the employee has done a "protected act".

A "protected act" in victimisation can be bringing proceedings under the Equality Act (which covers all forms of discrimination), giving evidence or information in connection with the proceedings, or even just making an allegation that the employer has contravened the Act.

In layman's terms this means that if an employee has alleged sex discrimination and is threatening that an employer is in breach of the Act, or that he or she is going to bring proceedings, then any detrimental treatment because of the same could give rise to a claim in its own right, a claim of victimisation in the Employment Tribunal.

Likewise, in the above scenario, refusing to give a reference because the ex-employee threatened proceedings is also an act of victimisation and give rise to a Tribunal claim. Indeed the law here is even wider and it is important to note that the person doing the victimising need not be the person who is the subject of the original complaint of discrimination. It follows that if the prospective employer in the scenario above decided not to appoint the ex-employee because he or she had brought or given evidence in proceedings against the former employer, then that would amount to victimisation too.

It is important therefore as an employer not to "retaliate" against an employee who is making allegations or bringing proceedings. There are potential defences available to an employer if the claims are in bad faith or there are genuinely separable other reasons for the treatment of the employee, other than the allegations of contravention of the Act.

There are obviously close ties between this form of claim and other whistle-blowing claims, in which allegations from employees (if they fall in certain protected categories) can give them protection from detriment and/or dismissal.

The advice to employers is to deal with all complaints and grievances carefully and fairly under their grievance procedures and to make sure that you can justify any treatment on other genuine grounds if an employee is, you believe, attempting to give themselves the protection of the Act without good justification.

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