

Euroview

Employment



Swearing at your boss may be OK in Spain!

Following a decision by Catalunya's Superior Court of Justice earlier in the year, it seems that serious verbal abuse of a more senior colleague may not always be a ground for dismissal.

The case concerned a manager who telephoned a subordinate to seek some information on a work-related matter. After five minutes, the employee concerned hung up. The manager then went to demand the information in person. The discussion descended into an argument about pay during which the employee lost his temper and called his manager "a son of a bitch" and a "swine". Unsurprisingly, he was dismissed and, after losing his first court challenge, took his claim to the Superior Court.

Articles 54 and 58 of Spain's Workers' Statute provide for disciplinary dismissals on the grounds of verbal abuse of an employee, and the relevant Collective Wages Agreement also provided that "verbal or physical offences against the employer, fellow workers or family members that live with them will be considered very serious offences." The sanctions for this type of offence are: "Suspension without pay of between 15 and 30 days or dismissal in accordance with the law, in either case without prejudice to any other measures taken against the employee".

Under Spanish law, the employer can choose the appropriate sanction – provided that it is one within the law.

Spanish case law has established that for verbal abuse to result in the dismissal of an employee, the offence must be: (i) serious; (ii) unjustified; and, (iii) the "victim" employee must be affected by the abuse. Other matters that should be taken into account are: (i) any relevant terms in the employee's contract; (ii) the objective of such terms; (iii) the employee's level of education (i.e. whether he is more or less educated than the abused person); (iv) his professional and academic qualifications; and (v) the place and time of the incident.

It is also essential for the courts to consider whether the dismissal was a proportionate response to the offence.

Taking all of the above into account, and considering the employee's length of service (he had worked there since 1999) and his level of professional qualifications, the Supreme Court held that offence was not sufficiently serious to justify dismissal. Indeed, in her judgment, the Judge said "The social degradation of language has caused the expressions used by plaintiff to become commonly used in certain settings, especially in arguments". Instead it ruled that the employee should be re-instated or receive compensation of €6,500.

Although the decision is on its face surprising, it is likely that an English Employment Tribunal would take similar considerations into account. One must question whether bad language in the workplace, especially to a superior, is or should be legitimised by repetition (the "degradation of language") but in England the Tribunal would have had to apply the "range of reasonable responses" test and it is hard to imagine that it would have found dismissal in those circumstances to fall outside that range.

This may not be the end of the matter, however, as the employer can appeal against the judgment to the Supreme Court.

"The social degradation of language has caused the expressions used by plaintiff to become commonly used in certain settings, especially in arguments."

France extends the duration of short-time work benefit

From 2 September 2009, the French Government increased the maximum period of State benefit for employees on short-time work from 800 to 1,000 hours per year.

France's state-funded short-term work benefit scheme (known as 'Chomage partiel') provides compensation to workers who suffer a loss in wages due to the temporary closure of all or part of the business or because of a reduction in the usual hours of work below the statutory working week of 35 hours. The temporary closure or reduction in hours must be attributable to economic conditions or specific events such as a shortage of raw materials, a disruption in energy supplies, adverse weather, etc.

The benefit is 60% of normal gross hourly earnings for the unworked hours. The statutory benefit can be supplemented by additional compensation paid by the employer and calculated in accordance with the relevant collective agreement.

Prior to this year, the short-term work benefit was payable for a maximum of 600 hours per employee per year. However, as part of France's response to the global economic crisis, this was increased in January 2009 to 800 hours (other than in the automotive and textiles industries, where a special 1,000-hour limit already applied).

Following calls from trade unions and employers' organisations, however, the limit on short-time work benefit was increased to 1,000 hours per year in all industries (with a corresponding increase in the duration of any additional compensation) from 2 September. The new limit applies to all short-time working introduced in 2009.

Changes to Sunday working in France

Sunday working in France has always been governed by strict legal rules. Indeed, in order to protect the interests of employees, French employment law preserves Sunday as a day of rest. Permanent exemptions to this prohibition were previously only granted if it was essential for the employee to work on a Sunday (for example to meet a public need such as a hotel or a restaurant).

A new law enacted by decree dated 21 September 2009 aims at making Sunday opening (currently widely practiced illegally in any case) lawful. The law introduces new exemptions to the general prohibition on Sunday working. From now on, no special authorisation will be required for retail establishments located in towns of particular touristic interest, spa towns and tourist areas of exceptional activity or permanent cultural value. Individual exemptions can also be granted if the absence of all employees on a Sunday would be detrimental to the public or would compromise the proper functioning of the establishment concerned.

These new exemptions are accompanied by guarantees for employees. Except for towns of particular touristic interest or spa towns, compensation for employees working on Sunday must be specified. Employees should receive at least double time if they work on a Sunday. In addition, a person's refusal to work on Sunday is not an acceptable ground for refusing to hire or dismissing him.

“A new law... aims at making Sunday opening, (currently widely practiced illegally in any case), lawful...”

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