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Yours faithfully

Online Legal Advise

**Online Legal Advise**

**Online Legal Advise­- ET1 claim form:**

**Sales commission structure changed after developing depression**

Claim No. tbc

### IN THE EMPLOYMENT TRIBUNAL

**[NAME OF TRIBUNAL]**

### 

### 

### BETWEEN:

## 

**[YOUR NAME]**

Claimant

**-and-**

**[NAME OF COMPANY]**

Respondent

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

### GROUNDS OF COMPLAINT

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**THE PARTIES**

1. The Respondent is a specialist software company serving large corporations and accountancy firms with corporate tax software, mainly products called [Product names]. They would sell software to their clients on the basis of annual subscriptions, whereby each year [Product name] subscriptions and [Service name] would need to be renewed (and/or upgraded) and a new fee would be charged by the Respondent to its client for this.
2. The Claimant was employed as a [Job title] on [Date]. He was responsible for new business and the retention and expansion of a select client portfolio. Each time that one of his clients bought software or renewed or upgraded, then he would earn commission on that sale, and the revenue would also count towards his bonus. His resignation letter, dated [Date], is at Annex A below.

**HISTORIC REMUNERATION**

1. There were three types of income which the Claimant could generate: salary, bonus and commission. Regarding salary, initially, the Claimant’s salary was [Salary] p/a, and on leaving this was [Salary].
2. The Claimant’s earnings for the financial year 2014/15 were [Amount], made up of basic salary, bonus and commission.
3. Regarding bonus, this was [Percentage] of salary, and was awarded for hitting targets in the calendar year. So if the salary was[Amount] that calendar year, then the bonus would be worth[Amount]. Historically, the targets were [Target] revenue for [Product name] and [Target] for ‘other’ income, totalling a target of [Total target]. In order to be paid the bonus, the Claimant would need to hit each individual target, and his total target as well. Thus:

[Product name] target [Target]

‘Other’ target [Target]

TOTAL target[Total target]

1. Re commission, historically the Claimant was always paid [Percentage] of revenue on sales of [Product name], and [Percentage] of revenue on sales of other software, including mainly ‘[Product name]’ and ‘[Product name]’. For example, in 2014, the following commission payments were to be made:

[Percentage]  on[Product name] sales

[Percentage]  on Professional Services

[Percentage]  on [Product name] Sales or Renewals

[Percentage]  on Other

1. Historically as a sales person, the Claimant would generate new business, and then he was entitled to hold on to the customer indefinitely, so long as they had either [Product name] or [Product name] products. So, within each period that the Claimant re-committed a customer to either [Product name] or [Product name], he would generate income from these payments, in the form of both commission and bonus.
2. As well as renewals, the Claimant was entitled to upgrade the subscriptions held by his clients, selling them more expensive [Product name] etc. This would of course increase his commission payments and also help with hitting his bonus.
3. Salespeople were allocated certain industry sectors (referred to as ‘verticals’) for example oil companies, manufacturing companies, or pharmaceutical companies. All opportunities in a particular ‘vertical’ would automatically be allocated to the particular sales person in charge of that vertical. Therefore, in relation to any discussions which the Claimant had been having or not over the years with any certain company in his vertical, any sale of software would always be attributed to him.
4. In periods of absence, for example sickness absence or annual leave, any opportunities which arose would be allocated to the absent salesperson in charge of that vertical. For example, if an oil company upgraded their software, when the salesperson in charge of the oil vertical was absent, then the commission from that sale would still be allocated to the salesperson in charge of the oil vertical, regardless of the fact that he or she was absent at that time. The revenue would also count towards the target of that same salesperson, in relation to their bonus for hitting their target.
5. The chronology set out below will demonstrate that the Respondent deliberately set out to victimise the Claimant by changing his commission structure, targets, verticals and opportunities during periods of absence. The catalyst for this action was the Claimant becoming ill with depression.

**CHRONOLOGY**

1. On [Date] the Claimant was signed off sick with depression, returning to work on [Date]. This was a relatively serious form of the condition and the Claimant checked himself into [Clinic name] for this period of time. This has been diagnosed as likely to last for over 12 months and therefore amounts to a disability pursuant to s.6 Equality Act 2010, and the Claimant is therefore protected as a disabled employee. The Respondent was aware on around [Date] that the Claimant had been signed off with Depression, and the Claimant made them aware before his return to work that he had been at [Clinic name].

Meeting [Date] re: Claimant’s absence

Discrimination particulars: harassment, direct & indirect disability discrimination & failure to make reasonable adjustments.

1. On [Date] the Claimant attended a meeting with [Name] ([Job Title]) & [Name] ([Job Title]) of the Respondent. This meeting lasted around 50 minutes, and constituted disability harassment and disability discrimination as set out below. At that meeting[Name] ([Job Title]) & [Name] ([Job Title]) made a number of comments including but not limited to:
2. [Name] kept asking what the Claimant had been doing
3. [Name] kept asking where the Claimant was living
4. [Name] kept asking why the Claimant had not received a letter that the Respondent had returned back to them
5. [Name] said they don’t know what to do with the Claimant and he has been off for an excessive time
6. [Name] & [Name] wanted the Claimant to provide them with information on how to deal with him
7. [Name] said he would rather the Claimant not be there
8. [Name] said the Claimant is unusual and a problem case
9. [Name] said he wanted to call the Claimant every day on his landline
10. [Name] and [Name] were raising the qualifications of the Claimant’s doctor
11. [Name] said “you know what we want you to do” The Claimant asked what was meant by that.

[Name] said “you know what we want you to do, you know”. He was implying that the Claimant should resign.

1. On [Date] the Claimant went to see [Name] ([Job Title]) in his office after sending an e-mail that he included him in. The Claimant explained the comments which were made by the Respondent during the meeting which he had had with [Name] ([Job Title]) & [Name] ([Job Title]) earlier that day. The Claimant outlined to [Name] how he had been bullied and harassed.[Name] made a number of comments including but not limited to:
2. The Claimant informed [Name] that he did not want any meetings like that again
3. The Claimant said he could not even speak after the meeting and had to go out to regain his breath
4. The Claimant said they were breaking every rule in the book
5. [Name] said you know what [Name] is like
6. [Name] said that [Name] will just blow his top
7. [Name] said [Name] has probably primed him
8. The Claimant informed [Name] that [Name] and [Name] were questioning the qualifications of my doctor and they wanted the Claimant to inform them with information on how to deal with the Claimant.
9. [Name] took no action as a result of this meeting to support the Claimant, such as investigating the Claimant’s allegations of discrimination.

Meeting [Date] re: meeting of [Date]

Discrimination particulars: harassment, direct & indirect disability discrimination & failure to make reasonable adjustments.

* + 1. On [Date] the Claimant attended a meeting with [Name] ([Job title]) & [Name] ([Job title]). The Claimant explained the comments which were made by the Respondent during the meeting which he had had with [Name] & [Name] on [Date], and outlined to [Name] how he had been bullied and harassed. [Name] made a number of comments including but not limited to:
       1. [Name] raised issue that the Claimant had not contacted her personally in his absence with more detail about his condition
       2. [Name] said she does not know what to say to the Claimant
       3. [Name] said that the Claimant came back on the wrong day; a day when she was not there.
       4. [Name] suggested that the problem had arisen because the Claimant had been off for a long time.
       5. [Name] said that it’s not fair that other people were covering the Claimant.
       6. [Name] said that the Respondent is in a difficult position because the Claimant is coming back 3 days and then 4 days on alternate weeks over the next two months.
       7. [Name] complained that the Claimant is doing a short week (as signed off by his doctor) and she asked what the Respondent is meant to be doing on the days when the Claimant is not there
       8. [Name] complained that the Claimant had not outlined the detail of all to do with his depression
       9. [Name] confirmed wanting confirmation of qualifications of the Claimants doctor, as per the discussion with [Name].

1. Thus the Claimant again raised with the Respondent what had happened in the meeting of [Date], including the harassment, but the Respondent took no action over this, for example by launching an investigation. This refusal to act in itself constituted direct and indirect disability discrimination, and a continuation of the harassment received on [Date].

Meeting [Date] re: absence ‘policy’

Discrimination particulars: harassment, direct & indirect disability discrimination & failure to make reasonable adjustments.

1. On [Date] the Claimant attended a meeting with [Name]. At that meeting [Name] made a number of comments including but not limited to:
2. The meeting was regarding taking two deals away from the Claimant, because they took place in the Claimant’s absence.
3. [Name] agreed that these two deals were allocated to the Claimant as usual because they were in the Claimant’s vertical
4. [Name] said it’s the first time someone has been off with long-term absence and he has proposed a new change in process.
5. [Name] said he is creating a new process based on new circumstances of the Claimant being signed off ill long-term
6. [Name] described it as addressing a new issue
7. [Name] said that the Claimant’s circumstances were not normal
8. [Name] confirmed that this has never been e-mailed or discussed before
9. [Name] raised concern that he did not know how long the Claimant’s condition would go on for.
10. [Name] raised that the Claimant had not explained the reasons for his illness
11. [Name] raised again accusations regarding the Claimant not being at his address regarding a supposed letter

Email [Date] re: absence ‘policy’

Discrimination particulars: harassment, direct & indirect disability discrimination & failure to make reasonable adjustments.

1. By email of [Name] of the Respondent confirmed to the Claimant that his commission structure would be changing, as per the meeting of [Date]. The main changes outlined were that sales that were achieved in a “long period of sickness absence” will not be eligible to the Claimant. This was to be retrospective in effect, in that it would apply from [Date].
2. No one else other than the Claimant was informed about this new discriminatory ‘policy’. This was only applied to the Claimant and no email or other update was given to the other sales person [Name] or to the account managers.
3. The retrospective nature of this rule change affected the Claimant with a loss in commissions of [Amount] for his client [Client name] and [Amount] for [Client name]. These amounts were due in [Date] and [Date] respectively. Of course further losses would occur going forwards during any further periods of absence.

Meeting [Date] re: targets, renewals & upgrades

Discrimination particulars: harassment, direct & indirect disability discrimination & failure to make reasonable adjustment.

* 1. On [Date] the Claimant attended a meeting with [Name], [Name], [Name] & [Name]. At that meeting [Name] made a number of comments including but not limited to:
     1. Increased the Claimants target on [Product name] from [Target] to [Target]
     2. Taking away all the Claimant’s established customers and reoccurring revenue, including renewals.
     3. All renewals were now to be removed from the Claimant’s income stream and allocated to colleagues in the account management department.
     4. Taking away all the Claimants opportunities to upgrade: as soon as the Claimant made a single sale, he would now be prevented from selling anything further to that customer again, and any opportunity would go straight to an account manager.
     5. [Name] said that all is changing from the end of [Date].
     6. [Name] said he knew that the Claimant was going to be confrontational, before he came in to the meeting
     7. [Name] was aggressive towards the Claimant in that meeting
     8. [Name] said that the Respondent would be applying these changes to the sales team
     9. However in reality, the changes would really only affect the Claimant
  2. Historically, often the Claimant would agree a licence sale in previous years and then sell to them services a number of months later. But now, as soon as the Claimant sold to a customer that customer was taken away from the Claimant and the Claimant would be unable to sell anything further to them.
  3. The changes regarding renewals and upgrades would only affect the Claimant because he was the only long standing sales person employed by the Respondent. The only other sales person employed at that point in time was called [Name] and she had started in July 2014 and therefore had only six customers, with zero previous revenue from [Product name] and zero previous revenue from [Product name]
  4. The theoretical financial loss which this would have on the Claimant is indicated in Annex 1, which is a list of the commissions earned from renewals and upgrades in [Year] and [Year]. In [Year], the Claimant would have earned [Amount] less. In [Year] the Claimant would have earned [Amount] less. Thus a mean average loss which it would have been reasonable to expect in [Year] would be around [Amount].
  5. On [Date] the Claimant received an email from [Name] which confirmed the above changes, but said that the changes would commence from the date of the email rather than the end of [Date].

Emails [Date] re: verticals, renewals & upgrades

Discrimination particulars: harassment, direct & indirect disability discrimination & failure to make reasonable adjustments.

* 1. By email of [Date], [Name] of the Respondent informed the Claimant that his commission structure would be changing further. The main changes outlined were as follows:
     1. Change of working a sales industry vertical: the Claimant would now be given a list of companies to contact, removing the ability to follow up on existing ongoing conversations/opportunities.
     2. All existing client accounts held by sales staff were to be taken away and given to the account management department
     3. No opportunity to upgrade these accounts would be undertaken by sales
  2. By email of [Date] [Name] of the Respondent informed the Claimant that his target would be changing. The main changes outlined were as follows:

[Product name] & [Product name] [Amount] (this increased by [Increase amount])

Other [Amount] (this reduced by [Amount])

TOTAL [Amount] (this increased by [Amount])

1. On [Date], the Claimant tendered his resignation by letter, a copy of which is set out an Annex B hereto. The Respondent placed the Claimant on garden leave until [Date], being his EDT.

Email of [Date] re: unpaid commissions

Discrimination particulars: harassment, direct & indirect disability discrimination & failure to make reasonable adjustments.

1. On [Date] the Claimant emailed [Name] of the Respondent objecting to the payment received in his latest payslip.[Name] replied saying this had been passed on to [Name]. The Claimant’s unpaid commission was as follows, and these should have been paid in either his [Date] or [Date] pay slips, totalling :

[Client/Company name]  [Amount]

[Client/Company name]  [Amount]

[Client/Company name]  [Amount]

[Client/Company name]  [Amount]

[Client/Company name]  [Amount]

TOTAL [Total amount]

1. On [Date] the Claimant again emailed [Name] objecting to the payment received.[Name] replied on the [Date] to confirm receipt, but no reply was forthcoming. This constituted a breach of contract and unlawful deduction of wages, as well as harassment, and direct and indirect disability discrimination.

**PARTICULARS OF CLAIM**

*Constructive unfair dismissal*

1. The Claimant was constructively unfairly dismissed contrary to section 98 of the Employment Rights Act (ERA)1998, in that:
2. none of the potentially fair reasons for dismissal, as contained with section 98 (4) ERA 1996, applied to the Claimant at the time of his dismissal and the Defendant held no genuine belief on reasonable grounds that such a fair reason existed;
3. if, which is denied, one or more of the potentially fair reasons for dismissal contained with section 98 (4) ERA 1998 applied to the Claimant at the time of his dismissal, it was nonetheless unfair for the Defendant to dismiss the Claimant for that reason;
4. The constructive dismissal of the Claimant was an accumulation of all of the facts set out in the ‘chronology’ section, above.

*Disability Discrimination*

1. The Claimant was subject to harassment and direct disability discrimination contrary to section 13 of the Equality Act (EA) 2010, including but not limited to:
   1. Since February 2015, the Claimant was, because of his disability, treated less favourably by the Defendant than others, in that he was spoken to and treated in a demeaning and inappropriate manner as set out above;
   2. Since February 2015, the Claimant was, because of his disability, treated less favourably by the Defendant than others, in that his income structure was changed as set out above and his income withheld;
2. Further, or in the alternative, the Claimant was subjected to indirect disability discrimination contrary to section 19 of the Equality Act in that the Respondent applied to him a provision, criterion or practice which is discriminatory in relation to his disability, including but not limited to introducing a new income structure and new rules which would inhibit his ability to earn, as set out above.
3. Further, or in the alternative, the Respondent failed to make reasonable adjustments, contrary to s.20 of the Equality Act 2010, including but not limited to the following adjustments:
4. The Respondent did not consult the Claimant regarding the proposed new commission structure
5. The Respondent did not give adequate warning of the proposed new commission structure
6. There was no consideration of a less unfavorable income structure
7. No risk assessment had been carried out for the Claimant
8. There was no reference to a health professional
9. The Respondent did not have any policies in place in relation to discrimination, disability or ill health, nor did it provide the Claimant with a written statement of employment particulars, which might have assisted in dealing with the Claimant’s condition in an appropriate way.
10. The constructive dismissal of the Claimant was also an act of harassment, and direct and indirect disability discrimination, in the manner set out above.
11. Any acts of discrimination (direct or indirect) or harassment which occurred over 3 months prior to the issue of proceedings were part of a course of discriminatory conduct and/or continuing acts, such that the ET has jurisdiction to deal with all such allegations.

*Breach of contract & unlawful deduction from wages*

1. The Respondent breached the Claimant’s contract of employment in that it changed his income structure, causing him financial loss, as set out above.
2. This breach of contract was also a fundamental breach, entitling the Claimant to resign and claim constructive dismissal.
3. Further, or in the alternative, the failure to make payments to the Claimant amounted to unlawful deductions of wages.

*Written Statement of Employment Particulars*

1. The Respondent acted in breach of s.1 ERA 1996 by failing to provide the Claimant with a written statement of employment particulars.

**REMEDY**

1. The Claimant seeks the following by way of remedy:
   1. The basic award.
   2. The compensatory award – all financial losses (past and future) as a result of dismissal (the compensatory award to be ‘uncapped’ due to disability discrimination);
   3. Damages for injury to feelings in line with the *Vento* guidelines.
   4. Damages for harassment.
   5. Damages for breach of contract, as set out above.
   6. Damages for unlawful deductions from wages.
   7. Remedy for failing to provide a written statement of employment particulars.
   8. Any other award as the Tribunal sees fit.

08 October 2015

Monaco Solicitors

**GROUNDS OF COMPLAINT ANNEX ‘A’**  
LIST OF INCOME FROM RENEWALS & UGRADES IN 2013 & 2014

[We have removed this Annex, but essentially this was a list of all the commissions earned for each client of the Respondent in 2013 & 2014]

**GROUNDS OF COMPLAINT ANNEX ‘B’** – LETTER OF RESIGNATION

[Name]

[Company name]

[Company address]Ref; Resignation letter (Constructive Dismissal)  
[Date]  
Dear [Name]  
Please accept this as my formal resignation from [Company name]. My last day will be [Date].

I feel that I am left with no choice but to resign in light of your direct response to me getting signed off with depression, including but not limited to the following

* Meeting on the [Date] with you and [Name] simply of harassment due to my medical condition where I was told that you did not want me here and suggesting that you wanted me to leave. Yourself and [Name] were pressurising me about why I had been off and wanted me to provide yourselves with information on how to manage me
* Creating a new rule due to me being signed off with Depression so I could not get sales in my absence and then applying this retrospectively
* Upping the hardest part of my target by 80% and doing this in the third month of our financial year. Doing so imposing unachievable goals
* Taking away existing opportunities by imposing a new plan on prospects with no notice
* Taking away all my repeatable revenue, by removing all my customers without due notice
* Bullying and trying to undermined my role within the team
* Holding up delivery notes and saying that work I was doing was going to be taken away and thus preventing me from closing more business in March.

I consider this to be a fundamental breach of the contract on your part… I will now proceed to issue a claim in the employment tribunal without further notice for disability discrimination and constructive unfair dismissal.

Regards  
[Your name]

Sales Executive