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Dear Sir or Madam

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Online Legal Advise

**ONLINE LEGAL ADVISE**

**ONLINE LEGAL ADVISE- Without prejudice letter no.1 in series:**

**Letter from employee's solicitor to employer**

STRICTLY PRIVATE AND CONFIDENTIAL

[Human Resources]

[Employer]

[Employer address]

[Date]

Dear [HR Manager]

**Without prejudice and subject to contract**

We have been instructed by [Employee] in relation to matters arising from her employment with [Employer]. [Employee] has now submitted her grievance appeal and you will note that she further grieves about the treatment that she has received during her sickness absence and the conduct of the grievance investigation.

We note your correspondence dated [18th August 2016] and received by [Employee] on [22nd August 2016]. My client has instructed me to engage in without prejudice discussions as she considers that there is limited scope that [Employer] will be able to take adequate steps to rebuild the employment relationship, which has been significantly damaged by the following matters:

1. The bullying and harassment and discriminatory treatment by [Line Manager];
2. The long-term failures to put in place reasonable adjustments to ensure that she is not disadvantaged as a consequence of her disabilities. For the avoidance of doubt we consider that as a consequence of both her epilepsy and her long term anxiety and depression [Employee] is a disabled person as defined under section 6 of the Equality Act 2010;
3. The partisan and biased approach that was adopted in the grievance that has been conducted; and
4. Some recent events that have come to her attention, which I will discuss below.

The impact of the above has had a significant and long-term effect on [Employee] health and wellbeing.

[Employee] has articulately set out the treatment that she endured over an extended period from [Line Manager], which was the subject matter of her first grievance.  It is evident from [Employer] grievance outcome that [Employer] consider that they have an obligation to take a defensive and protective line and sanction [Line Manager] treatment rather than giving credence to [Employee]. [Employee] had painstakingly chronicled the examples of the bullying and harassment in a forensic and considered manner. Rather than giving due consideration to this comprehensive account, the majority of her testimony was dismissed with a limited and cursory mention. Instead, the evidence of [Line Manager], who stated repeatedly that he could not recall many of the relevant events, was considered to be persuasive.

Over the course of nearly 2 and half years, [Employee] health has worsened as a consequence of [Employer] failures – the effect the stress and anxiety has had on her epilepsy has meant that she has been at a high risk of having seizures (which had previously been well controlled).  She has become frail and unable to enjoy significant life events because of the impact that her workplace conditions have had upon her.  She arrived at [Employer] in [September 2013] as an ambitious individual who had much to offer with her extensive experience.  She was recruited because she was offering more than just the efficiency and skill of an experienced personal assistant.  She was the

chosen candidate for the role because she was offering dynamism and drive. [Employee] brought her impressive skills and experience to [Employer] and over the course of her employment she added considerable value to the projects that she was expected to lead and deliver.

[Employee] could have been championed by [Line Manager] and been allowed to develop within her role.  However, it seems that [Line Manager] was often playing a double game where he was setting her up to fail.  For example, in [February 2015], the purported role of Company Personal Assistant (pages 9/17/45/51/53 of Original Grievance): [Line Manager] described [Employee] role to the Company Committee who were meeting collectively for the first time as, “basically the PA for [Employer]” and equated her to a “server” in a restaurant. Later, and during the grievance process, [Line Manager] sought to justify this description suggesting that it was a prestigious title in a model that he had developed elsewhere. However, [Line Manager] failed to mention, both to the Committee and in his witness statement, that he had actually informed [Employee] that she would take a leadership role and that she was Company Interfacing Manager.  This mismatch in expectations meant that she was put at a substantial disadvantage, and was often overloaded with herculean tasks, which were not acknowledged, and meant that she needed to work long hours to deliver the required results. Rather than getting support and praise for her good work, [Employee] found that her achievements were usurped, credit was given elsewhere and she was presented as the administrative support when it was expedient to do so.

In another specific incident, [Line Manager] miscommunicates her role within the [Project] (pages 24/18/20/64 of Original Grievance), [Employee] was provided with reassurance that she would not be expected to deliver at a senior level (following an intervention from another employee on her behalf).  Instead the internal client, was informed that another employee would be undertaking [Employee] full role and, prior to a meeting where responsibilities were being discussed, [Line Manager] took [Employee] to one side and told her not to speak during the meeting, even if she disagreed with what was said.

As evidenced in these examples above, [Employee] was frequently given bewilderingly contradictory instructions from [Line Manager] that resulted in her being subjected to the controlling behaviour that she identifies in her original grievance. In [Employer] grievance investigation, there was no attempt to engage and dissect this complex power game, and an acute failure to understand why this has had a devastating effect upon [Employee].

It is troublesome that in the Grievance Outcome [Employee] ambitions have been considered to be a negative factor. It appears that in doing so, the Grievance Outcome has bought into [Line Manager] assertion that [Employee] grievance was borne out of frustration that she was undertaking a role where she would not realise her ambitions. In truth, this was the effect of his conduct in being an overbearing and bullying [Line Manager] who was frequently aggressive and overstepped professional boundaries.  At its core, there is a discriminatory animus:  as a woman**,** [Employee] should not be ambitious as she should work in an auxiliary function and not take on a leadership role.  Regrettably, also, [Line Manager] deliberately targeted [Employee] with particular attention and scrutiny, which resulted in the discriminatory conduct outlined in detail in her grievance.

In the email exchange dated [11 September 2015], [Employer] did not examine the emails that [Employee] relied upon, which were written in Dutch between colleagues. [Line Manager] explanation given in his witness statement is shown to be inaccurate and also the exchange demonstrates the extent of his antipathy to [Employee].

[Employee]? ..wat met die hierbij?

Translation

[Employee]? ..what's she got to do with this?

[Line Manager] makes it clear that he did not want [Employee] to be present.  This exchange gives significant credence to the fact that [Line Manager] wanted it to be a male-only event and that he expected the female support staff to make their own meal arrangements.

As the various Occupational Health reports have made clear, the effects that the workplace matters have had on [Employee] have been acute and long term.  She has epilepsy, and over the course of the last two and half years she has been at a significant, and high, risk of seizures because of the continued increased exposure to high levels of stress and anxiety, which in turn have led to depression. [Employer] appointed Occupational Health Physician advised in [January] that it was paramount that stress was avoided, and there has been an ongoing failure to make reasonable adjustments in this regard, as evidenced in the grievance outcome, which offered no meaningful outcome that may have enabled [Employee] to return to the workplace.

She has reached the conclusion that she can have no future within [Employer] as [Employer] have indicated a preparedness to sanction bullying and harassment from a senior manager and will not undertake a proper and fair-minded approach to the grievances raised by members of staff.  [Employee] had a long-term hope that she could recover and return to [Employer] where she has been able to show her extensive talent and skills.  However, [Employer] has failed to give any indication that they will make reasonable adjustments to ensure that [Employee] is able to work in an environment where she is not exposed to high levels of stress and anxiety.  There was an express recommendation that [Employee] should not be exposed to [Line Manager] or his influence and, for reasons which have not been made clear, there was a wholesale failure to ensure that such measures were put in place to make it possible for [Employee] to be able to meaningfully return to the workplace, such as an alternative role within the business where she is not exposed to [Line Manager] and his influence.

Further, as outlined above, [Employee] has recently learnt that her grievance against [Line Manager] and her sickness absence have been widely discussed amongst her colleagues despite [Employer] assurances that her grievance would be dealt with in the strictest confidence and that all those interviewed would be required to sign non-disclosure agreements.

[Employee] has been told that there have been rumours circulating recently that [Line Manager] and [Employee] had an affair and that this has been the cause of both [Employee] grievance and her ill health. It is clear that [Employee] makes mention of no such thing in her grievance. It is also of deep and considerable concern that the adequate safeguards to protect confidentiality were not put in place. [Employee] needs immediate reassurance and undertakings that [Employer] will now put measures in place to ensure that her reputation is protected.  No doubt it will be understood that learning that this rumour has been circulating, and that [Employee] is being maligned in this way, has caused [Employee] and her husband significant distress.

It is in view of all of the factors laid out above, that [Employee] is giving serious consideration to terminating her employment and wishes to agree terms.  In order to reach a compromise where she will terminate her employment and end the grievance process she will need to be compensated for the past considerable failures of [Employer] and be provided with a sufficient financial cushion to enable her to sufficiently recover and find meaningful employment elsewhere.  Accordingly, she has provided me with instructions to make the following proposal.

1. Re-payment of wages that would have been paid following the exhaustion of Company sick pay had [Employer] put reasonable adjustments in place to allow her to return to the workplace without suffering a substantial disadvantage. Additionally, following the reduction in her pay and subsequent zero pay status, [Employee] should have been able to access the income protection under [Employer] scheme.
2. Payment of her three month acting up allowance, which [Employer] failed to pay in [June 2015].
3. Payment in lieu of four weeks’ notice;
4. Accrued and untaken holiday pay of 30 days;
5. An agreed termination which is proposed to be [30 September 2016];
6. Compensation for loss of employment, statutory rights, and loss of earnings following the termination of employment for a period of six months’ post-employment;
7. Compensation for injury to feelings and personal injuries suffered as a consequence of the treatment suffered, assessed with reference to highest end of the middle bracket of the Vento –v- West Yorkshire Constabulary guidelines - £18,000.00;
8. A payment towards counselling and rehabilitation (£4,000), and outplacement support (£3,000) excluding VAT, to be open and utilised [Employee] over the course of an 18 month period from the termination date.
9. References agreed with [Employer]);
10. Mutual non-disparagement and confidentiality terms;

In return for the above, [Employee] will sign a settlement agreement agreeing to forgo her claims against [Employer], and will no longer pursue her grievances against [Line Manager] and [Employer]. Our fee for advising on such an agreement will be £500 plus VAT.

I look forward to hearing from you substantively.

Yours sincerely

[Lawyer name and signature]