

IRISH TIMES INNOVATION MAGAZINE CASE STUDY

Answer

Sean should approach Liam as soon as possible and detail his concerns in regard to Keith, such as his failure to adhere to established reporting lines and administrative procedures. He should articulate his concerns regarding Keith's behaviour towards other employees and himself. He should make Liam aware that Keith has criticised his colleagues and in particular, himself, in the presence of clients and raise his concerns about Keith's style of interaction with clients.

Liam needs to take a practical approach here with an eye at resolving the situation, as amicably as possible, but at the same time being aware of the legal consequences and implications of not doing so.

Liam's needs to immediately now get a handle on the facts of the situation. Are there documented protocols and procedures, which Keith is clearly not adhering to? Sean has described Keith as an "Egotistical Bully". Is there some substance to this, have other employees complained? Does Liam inherently know there is a problem with Keith's behaviour, which Zama has never addressed?

Liam may need to get more involved and give clear direction. He may need to assert and confirm his support of Sean and confirm that there has to be clear reporting lines and reinforce the existing structures and procedures.

If it is Zama's priority to keep both employees, Liam needs to establish whether the working relationship between Keith and Sean, which is seriously strained at the moment, can be salvaged.

Liam should establish whether there are any existing procedures within Zama, which are relevant and whether they could be utilised. Liam could try and mediate informally between Sean and Keith. He would need Sean and Keith to articulate what their concerns are in relation to working with each other and ask both parties to suggest solutions. If Liam felt too close to the situation he could suggest a formal mediation, where an outside mediator was appointed to try and resolve differences in management and personality styles between and Keith and Sean. This would allow Liam to step outside of the problem and perhaps, also allow the mediator to formulate objective solutions, which may be acceptable to both parties.

The issue in relation to Keith's behaviour towards Sean and other employees could become a more serious issue for Zama. Zama is obliged to provide all employees with a safe place of work, which would include the reasonable prevention of bullying and stress related injuries in the workplace.

Remember Zama may be vicariously liable for the actions of Keith. Insofar as his behaviour is offensive to the extent that it would be deemed to be discrimination or harassment, a claim may be taken against Zama for the consequences of his behaviour. A potential defence to such behaviour is possible if the employer can show that they took steps to prevent or reverse the effects of the harassment or discrimination.

If such behaviour is left unaddressed, a series of claims could follow against Zama. For example, Sean or one of the other employees who have been subjected to harassing behaviour by Keith, could decide that their work environment is so

intolerable as to constitute a repudiation of their contract of employment in respect of which, they could resign and claim constructive dismissal. The exposure here is a maximum compensation award of two years gross remuneration in the EAT.

Also, if one of the employees is a female or from one of the new communities, they might be able to argue that his behaviour towards them was motivated on the grounds of gender or race. Similarly, they could take a claim under the Employment Equality Acts 1998-2007 for compensation, again up to a maximum of two years gross remuneration.

If Sean or one of the other employees develops a stress condition or a psychiatric illness as a consequence of Keith's behaviour towards them, they could seek to take a claim for personal injuries against Zama.

Liam should check now whether Zama has a Code of Practice, Dignity at Work or Bullying/Harassment Procedure in place and if not, they should put one in place immediately. This provides a procedure and a benchmark by which, behaviour towards employees is dealt with internally by an employer and will assist him in tackling Keith regarding his behaviour and is an important factor in establishing a defence to such claims.

Liam may need to address Keith's conduct in relation to clients. Is there a Code of Conduct as to how Keith should behave with clients and his comments regarding staff. Also, is it a good idea that alcohol forms such a significant part of socialising with clients. Zama should also be aware that they are vicariously liable for Keith's actions while he is on client business, therefore, if Keith was intoxicated on a client night out and acted in an inappropriate manner towards another employee or client, Keith could be exposing the firm for further claims in this regard. Another issue is that his sales records are currently hitting a plateau, is this due to his alcohol consumption? Does his behaviour warrant disciplinary action or at least an informal warning as to how he should behave so that disciplinary action can be averted at a future date. Keith may think there is nothing wrong with his conduct and may need to be disabused of this.

Liam could also think about management training across the Board for all HR and staff in relation to bullying and harassment and a Code of Conduct with clients.

He should also consider either training his existing HR Personnel to deal with such issues or expanding it so that the capabilities are there in the future to deal with such issues.

Ultimately, Liam should strategise to avoid a situation where Sean walks out and claims constructive dismissal or Keith's behaviour generates a series of claims against Zama or where he has to formally investigate Keith's behaviour under a procedure and ultimately discipline him. The problem is complex but if Liam's ultimate aim is to keep both employees, then he might consider outside mediation as a solution.

The bottom line is Liam cannot afford to sit back and do nothing. The current situation is a time bomb and it will be Zama that will pay if the bomb explodes.

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