

Contractor Doctor: I am being harassed by a client's employee - what are my rights?

Dear Contractor Doctor,

I recently started a contract and have been teamed with someone who has serious personality issues. He is becoming increasingly aggressive towards me, and I fear that he will shortly physically assault me.

I have raised his behaviour with our manager who explained that I could not raise a grievance, as he was uncertain of my 'internal/staff' status. He also doesn't want the hassle that raising a grievance would cause him.

What are my legal rights in this situation?

Thanks

(Name withheld for reasons of confidentiality)

Contractor Doctor says:

"Technically, the manager of the section is correct when he says that you cannot raise a grievance," explains David Royden, employment law specialist at [Laytons Solicitors](#). "A contractor could only raise a grievance with the client's permission, and it sounds unlikely that it would be given in this case."

Royden also urges caution when contractors are considering taking this course of action: "If a contractor wants to raise a grievance they are effectively saying to the world, 'I am an employee', which could put their [IR35](#) status in serious jeopardy."

"The contractor in this case should record exactly the situation in writing to their manager, clearly stating that they acknowledge they are not an employee and record that they have real concerns with regard to their physical safety and that the situation needs to be addressed."

Health and safety

However, according to Royden, although a contractor may have no employment rights and want to avoid any indications that they are an employee, they do have rights under health and safety legislation.

"Health and safety legislation applies to workers, and does not distinguish between employees and contractors," continues Royden. "The client has a duty to provide a safe working environment for the contractor."

By detailing the situation in writing to the client's manager in this case, the contractor has informed the client their concerns about health and safety. In the event anything should happen, the client will be liable and in default for not taking reasonable action despite being warned by the contractor.

Contractually bound

According to Royden, many contractor and consultant contracts include clauses that place an obligation on the client to provide a safe working environment: "Contractors can have an added layer of protection by including a clause detailing that the client, their servants and agents are responsible for maintaining a safe working environment."

Many contractors face nothing more serious than a loose cable when working on client's premises, but for some contractors, for example in the oil and gas sector, the provision of a safe workplace could mean the difference between life and death.

If the worst happens

"In a case such as this, if the contractor is assaulted by the client's employee they must of course report the incident to the police immediately," says Royden. "They are then in a position to make claims against both the client's employee who committed the assault and against the client."

The assault is not just a criminal matter, it is also a civil matter. The contractor can, in effect, make a personal injury claim and because they have warned the client in writing, the client is in default for not taking reasonable action following the contractor's warning.

Of course the hope is that the contractor need not take any action apart from warning the client in writing and that the situation is

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David Royden, Laytons Solicitors

defused or effectively dealt with.

Good luck with your contracting.

Contractor Doctor

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