

BULLYING AND HARASSMENT AT WORK

What is harassment and bullying?

The Equality Act 2010 defines harassment as ‘unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating and intimidating, hostile, degrading, humiliating or offensive environment for that individual’.

The “protected characteristics” under the Act are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion and belief
- Sex
- Sexual orientation

Bullying is not specifically defined in law but Acas gives the following definition: ‘Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient’.

What are harassment and bullying behaviours?

Harassment and bullying may be against one or more people and may involve single or repeated incidents ranging from extreme forms of intimidating behaviour, such as physical violence, to more subtle forms such as ignoring someone. It can often occur without witnesses. Examples include:

- unwanted physical contact
- unwelcome remarks about a person’s age, dress, appearance, race or marital status, jokes at personal expense, offensive language, gossip, slander, sectarian songs and letters
- posters, graffiti, obscene gestures, flags, bunting and emblems
- isolation or non-cooperation and exclusion from social activities
- coercion for sexual favours
- pressure to participate in political/religious groups
- personal intrusion from pestering, spying, and stalking
- failure to safeguard confidential information
- shouting and bawling
- setting impossible deadlines
- persistent unwarranted criticism
- personal insults

The legal position

Harassment

The law protects individuals from harassment while applying for a job, in employment and in some circumstances after the working relationship has ended (for example, in connection with the provision of a verbal or written reference). There is also protection for people against harassment on the basis of their membership or non-membership of a trade union and, in Northern Ireland, against harassment on the basis of political belief. In England and Wales, harassment because of an employee's political views is not automatically protected although employees who were dismissed on or after 25 June 2013 as a result of their political opinion or affiliation don't need two years' service in order to bring an unfair dismissal claim.

Employers are liable for harassment between employees, and can also be liable for harassment which comes from a third party (for example, a customer). It is good practice for employers to take steps to protect employees from all forms of harassment.

Bullying

The legal position with respect to bullying is more complex as there is no separate piece of legislation which deals with workplace bullying in isolation. Bullying might be part of discriminatory behaviour, or related to a myriad of different legal principles and specific laws, for example:

- breach of contract - usually breach of the implied term that an employer will provide reasonable support to employees to ensure that they can carry out their job without harassment and disruption by fellow workers
- the common law obligation for an employer to take care of workers' safety
- Health and Safety at Work Act 1974
- Trade Union and Labour Relations (Consolidation) Act 1992 - dealing with special types of intimidation
- Criminal Justice and Public Order Act 1994
- Employment Rights Act 1996 - for example, constructive unfair dismissal
- Protection from Harassment Act 1997
- protection for whistleblowers under the Public Interest Disclosure Act 1998
- Human Rights Act 1998

Responsibilities of employers and employees

Despite increasing awareness of the problems of bullying and harassment, these behaviours can still be a significant workplace issue.

An employer's first responsibility is to put in place a robust and well communicated policy that clearly articulates the organisation's commitment to promoting dignity and respect at work. You can find a summary of suggested contents below.

Employers' responsibilities may extend to any environment where work-related activities take place. These can include social gatherings organised by the employer such as work parties or outings. An employer could be liable for events which take place on these occasions unless they can show they took reasonable steps to prevent harassment.

Employers should be especially aware of 'cyber bullying'. Detrimental texts sent via mobiles or images of work colleagues posted on external websites following work events could amount to bullying. As this would be seen to have its origins in the workplace, the employer could be liable.

Importantly, all individuals also have a responsibility to behave in ways which support a non-hostile working environment for themselves and their colleagues. They should be made aware of the policy and their rights and obligations and personal responsibility under it. Encouraged employees to challenge inappropriate behaviour and take action if they observe or have evidence that someone is being harassed. Individuals can be personally liable to pay compensation and can be prosecuted under criminal as well as civil law.

There is much research, for example by the CIPD, which shows that people who experience bullying or harassment are more likely to be depressed and anxious, less satisfied with their work, to have a low opinion of their managers and senior managers and to want to leave their organisation.

Employers and individuals can be ordered to pay unlimited compensation where discrimination-based harassment has occurred, including the payment of compensation for injury to feelings.

Policy

A clear policy which is communicated to all employees is essential to tackle harassment. The policy should include the following elements:

- examples of what constitutes harassment, bullying and intimidating behaviour including cyber-bullying, work-related events and harassment by third parties
- explain the damaging effects and why it will not be tolerated
- state that it will be treated as a disciplinary offence
- clarify the legal implications and outline the costs associated with personal liability
- describe how to get help and make a complaint, formally and informally
- promise that allegations will be treated speedily, seriously and confidentially and that the employer prevents victimisation
- clarify the accountability of all managers, and the role of union or employee representatives
- require supervisors/managers to implement policy and ensure it is understood
- emphasise that every employee carries responsibility for their behaviour

All employees should:

- be made aware - through induction, training and other processes - about their rights and personal responsibilities under the policy and understand the organisation's commitment to deal with harassment
- know who to contact if they want to discuss their experiences in order to decide what steps to take
- know how to take a complaint forward and the timescales for any formal procedures

The policy should be monitored and regularly reviewed for effectiveness, including:

- records of complaints, why and how they occurred, who was involved and where
- individual complaints to ensure resolution and no victimisation

It is also essential that line managers understand their role in addressing all forms of intimidating behaviour to stop it from being repeated, and that they have access to help and support with appropriate confidentiality and sensitivity.

The policy should be cross-referenced with the company's grievance and disciplinary policy.

Advice and counselling

Consider allowing all employees access to someone inside the organisation trained for this role or an outside sponsored service. This enables them to talk in confidence about any intimidating behaviour they have experienced or observed in order to discuss the options available to resolve the problem and decide what action to take.

Guidance and counselling can be offered to people whose behaviour is unacceptable, as well as those affected by being harassed. Simply punishing those responsible for the harassment risks isolating individuals who may not understand how their behaviour is affecting their colleagues.

Dealing with complaints

All complaints should be dealt with promptly. Some may be dealt with internally and informally. In minor cases it may be sufficient for the recipient of harassment to raise the problem with the perpetrator, pointing out the unacceptable behaviour. But if an employee finds this difficult or embarrassing, your procedures should enable support from a colleague, an appropriate manager or someone from HR. A choice of contact should be available in case the person's manager is the alleged harasser.

Mediation

Mediation can help to improve relationships between employees, reduce or eliminate the stress involved in more formal processes and avoid the costs involved in defending employment tribunal claims.

Formal procedures

If informal approaches don't work and harassment continues; or if it is serious in nature from the outset then you will need to invoke your formal grievance or disciplinary procedures to deal with the issue.

Further Information

If you would like further information about drawing up a bullying and harassment policy, or dealing with an issue in your workplace, then please contact Julia or Angela for assistance. Tel 01768 753001 or email: info@peopledecisions.co.uk