

Bullying and Harassment At Work

Essential facts all Employers should know

Expert knowledge means success

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Note: This publication has not been updated since it was last published. Some of the hyperlinks may have changed and may need updating. In addition, some of the information in this publication may be out of date.

Introduction

Bullying is not a term confined to the school playground. It exists in the workplace and, for many people, bullying and harassment shadows their professional lives and may have personal implications.

Bullying and harassment is behaviour that makes someone feel intimidated or offended. Bulling itself is not against the law but harassment is¹.

The Statistics

An Industrial Society article on bullying highlighted two interesting statistics:

- Research undertaken by the University of Manchester Institute of Science and Technology showed that bullying can be a reason for nearly 50% of all stress related illness affecting employees;
- The Health and Safety Executive calculated mental health problems result in UK businesses losing 80 million working days each year.

Employers are increasingly aware that bullying economically affects their business as well as undermining their employees. Some of the consequences of a bullying approach to management are absenteeism due to stress, high staff turnover and under-performance, which leads to money loss on sick pay, training costs and inefficient working.

Stress Related Illness

Most victims of bullying do not confront their bully but instead remain silent for years, fearing further recriminations and of losing their jobs. Bullying can often cause stress related illnesses and consequently employers may be in breach of their duty to provide a safe place of work. In certain circumstances, the employee could claim constructive dismissal or even personal injury. In the case of *Walker v Northumberland County Council*, it was stated that stress related mental injury could amount to personal injury where the employer's treatment was extremely serious and caused a recognised stress related illness.

For more information on an employers' obligations regarding stress in the workplace see our publication

(627) [Stress at Work](#)

Unfair Constructive Dismissal

Currently, there is no legislation specifically preventing bullying in the workplace. However, if an employee resigns as a result of bullying, they may bring a claim for unfair constructive dismissal on the grounds that the employer's behaviour was in breach of the implied term in their contract of employment that the employer would not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence between them.

Employers should take note of their employee's complaints and must respond. Failure to do so promptly may constitute a breach of contract entitling the employee to resign and claim unfair constructive dismissal.

The Protection From Harassment Act 1997

Under the Protection from Harassment Act 1997, it is a criminal offence to harass or pursue a course of conduct which causes another person to fear that violence will be used against them. Violence may include psychiatric injury.

A victim of harassment may also have a civil remedy and may be awarded damages where they are able to prove that a particular course of conduct amounts to harassment and would have been considered by a reasonable person, in the position of the harasser, to have amounted to harassment. In such circumstances, the court is also able to grant an injunction against the harasser.

Civil claims may be brought under this Act up to six years after the alleged harassment.



Survey highlights the growing problem of workplace bullying

A survey published by the Chartered Institute of Personnel and Development (CIPD) in November 2006 showed that bullying can take many forms (including ridiculing personal characteristics, making unfair criticisms or simply ignoring individuals, as well as physical or verbal harassment) and appears to be on the increase.

In the CIPD survey, some 2,000 employees were interviewed, one in five of whom stated that they had experienced some form of bullying or harassment over the last two years. The figures were slightly higher for public sector workers, at 22%, compared with 17% of workers in the private sector. This finding may reflect the higher levels of stress in professions like healthcare and teaching. It may also indicate greater levels of awareness of the bullying issue among public sector employers and recognition of the need to deal with this problem.

The groups most likely to become victims of bullying and harassment are black and Asian employees, women and disabled people. 29% of ethnic minority groups reported experiencing some form of bullying or harassment in the workplace, compared with 18% of white employees. Workers with disabilities, at 37%, were twice as likely to report the problem as employees without disabilities (18%).

More information can be found in the CIPD guide: *Bullying at work: Beyond policies to a culture of respect* at: www.cipd.co.uk/NR/rdonlyres/D9105C52-7FED-42EA-A557-D1785DF6D34F/0/bullyingatwork0405.pdf

Discrimination Legislation

There have been significant advances in discrimination legislation generally in recent years. It is now unlawful to discriminate on the grounds of:

- someone's sex (including gender reassignment);
- sexual orientation;
- marital status;
- age;
- race;
- colour;
- nationality;
- ethnic origin;
- religion or beliefs;
- disability;
- pregnancy or childbirth;
- membership or non-membership of a trade union; or
- part-time workers status.

Bullying and Harassment at Work

Some argue that the relationship formed by an employment contract is unequal in its very essence. You need a job to survive and the employer has a choice between giving the job to you, as opposed to one of many other hopefuls. It therefore seems logical that our behaviour in the workplace is affected by this perceived power imbalance. Dignity at work policies and legislation aim to ensure that we (both employer and employees) are all interacting within the confines of an agreed set of social rules. It also addresses behaviour that ultimately may be detrimental to both the business and the individual.

So what does all this mean in practice?

Definition: *Bullying and Harassment*

There are many definitions of bullying and harassment.

Bullying may be characterised as: *Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient.*

Harassment as defined in the Equality Act 2010 (EqA) is: *Unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive for that individual.*

(Source: ACAS Guide for Managers and Employers Bullying and Harassment at Work)

For examples of bullying and harassment, please follow the below link to the relevant Acas Guides:

www.acas.org.uk/index.aspx?articleid=1392

Why does it matter?

The effects of bullying and harassment on the individual are more readily identified as it will most likely lead to stress, loss of self-confidence and self-esteem caused by harassment and bullying. The individual can also feel insecure about their job or fall ill due to the increase of stress in the workplace. Should this happen, the employee may be absent from work and in extreme cases, even decide to resign.

In any event, bullying and harassment at work will lead to a decrease in efficiency, adversely-affected relations in the workplace and an increased cost to the business may occur due to poor employee relations, low morale, inefficiency and (potentially) loss of staff. As the ACAS code says, it is important to note that the impact on the individual can be the same as harassment and the words bullying and harassment are used interchangeably in the workplace.

Unless bullying amounts to conduct defined as harassment in EqA it is not possible to make a claim to an employment tribunal about it.

For the individual, this can include:

- Stress and/or sleep disturbance.
- Fatigue.
- Panic attacks or general anxiety.
- Depression.
- Impaired ability to work/concentrate.
- Reduced job performance and relations in the workplace.
- Loss of self-confidence and/or self-esteem.

For the employer, the cost to the business can include:

- Poor employee relations.
- Low morale.
- Loss of respect for managers and supervisors.
- Poor performance.
- Inefficiency and loss of productivity.
- Absence.
- Resignations of skilled staff.
- Damage to company reputation.
- Tribunal or other court cases and payment of unlimited compensation.

As the ACAS guide explains, bullying and harassment are not only wholly unacceptable on moral grounds, but may also create serious problems for your business as a whole. The following are potential outcomes to a bullying and harassment situation that is ignored:

- Poor moral and poor employee relations.
- Loss of respect from managers and supervisors.
- Lost productivity.
- Actions.
- Resignations.
- Damage to company reputation.
- Tribunal and other court cases and payment of unlimited compensation.

What do you need to care about?

Types of Harassment

Unlike direct discrimination, harassment does not require a real or hypothetical comparator. It is therefore not necessary for the worker to show that another person was, or would have been treated more favourably.

EqA prohibits three types of harassment. These are:

- Harassment related to a "relevant protected characteristic";
- Sexual harassment; and
- Less favourable treatment of a worker because they submit to, or resist, sexual

harassment or harassment related to sex or gender reassignment.

The relevant protected characteristics are:

- Age
- Disability
- Gender reassignment
- Race
- Religion or belief
- Sex
- Sexual orientation

Harassment Related to a Protected Characteristic

For this type of harassment to occur a person has to engage in unwanted conduct which is related to a relevant protected characteristic and which has the purpose or the effect of:

- Violating the worker's dignity, or
- Creating an intimidating, hostile, degrading, humiliating or offensive environment for that worker.

It should be noted that unwanted conduct may include a wide variety of behaviours. It can for instance be:

- spoken or written words or views
- imagery
- graffiti
- physical gestures
- facial expressions
- mimicry
- jokes
- pranks
- acts affecting a person's surrounding or other physical behaviour

What does your staff handbook say?

If you have a dignity at work policy in your staff handbook, it is advisable to include clear examples of what constitutes unwanted conduct. This ensures that it is then clear in everyone's mind where you draw the line.

It is important to note that the word **unwanted** in this context actually appears to mean the same as **unwelcome** or **uninvited**. For the purposes of EqA, unwanted does not mean that express objection must be made to the conduct before it becomes unwanted. Another misconception is that a one-off incident cannot amount to harassment. This is not true. If the act is serious enough it can amount to harassment under the EqA.



Examples of Harassment

Example:

A female car mechanic is told by her boss that her work is not as good as her male colleagues and perhaps she should stay home and cook and clean for her husband. This all happens in front of other male colleagues. This statement could potentially amount to harassment related to sex as it likely to have been unwanted and the female car mechanic would not have to object to it before it was deemed unlawful harassment.

The concept **related to** a protected characteristic is also important as it has a very broad meaning in that the conduct does not have to be **because of** the protected characteristic. Unlike that which a lot of people think, this can include the following situations:

- Where conduct is related to the worker's own protected characteristics:

If a worker with HIV is verbally abused because he or she has to take a lot of medication in the workplace, this could amount to harassment related to disability.

The most common form of harassment in the workplace is where a person is generally abusive to other workers, but in relation to a particular worker, the form of the unwanted conduct is determined by that worker's protected characteristic.

Example:

During a meeting attended by both male and female workers, a male manager directs a number of remarks of a sexual nature to the group as a whole. A female colleague finds the comments offensive and humiliating to her as a woman. She would be able to make a claim for harassment, even though the remarks were not specifically directed to her.

- Where there is any connection with a protected characteristic.

Under the EqA, protection is provided because the conduct is dictated by a relevant protected characteristic. It doesn't matter if the worker has that characteristic themselves. Connection with a protected characteristic may therefore arise in several situations:

- The worker may be associated with someone who has protected characteristics.

Example:

A worker has a daughter that has converted to Islam. His work colleagues make offensive remarks to him about his **daughter's new religion**. In this case, the worker could have a claim for harassment related to religion or belief.

- The worker may be wrongly perceived as having particular protected characteristics.

Therefore, in the above example, the daughter may not have converted to Islam, but if her father is being subjected to abuse because his colleagues think she has, he could still have a claim for harassment related to religion or belief.

- The worker is known not to have the protected characteristic but nevertheless is subjected to harassment related to that characteristic.

Example:

If a worker is subjected to homophobic banter and name calling, even though his colleague knows that he is not gay. Because the form the abuse relates to sexual orientation, this could amount to harassment related to sexual orientation.

- The unwanted conduct related to a protected characteristic is not directed at a particular worker, but at another person or no one in particular.

Example:

A manager racially abuses a black worker. As a result of the racial abuse, the black **worker's white colleague is offended** and could bring a claim for racial harassment.

- The unwanted conduct is related to the protected characteristic, but it does not take place because of the protected characteristic.

Example:

An example of this would be a male worker who has a relationship with his female manager. When this male worker was seen with another female colleague, the manager suspects that an affair between them exists. As a result, the manager makes the male **worker's working life difficult by criticising** his work and using offensive and abusive language. The important point here is that the behaviour is not because of the sex of the male worker, but because of the suspected affair which is related to his sex. This could amount to harassment related to sex.



Sexual Harassment

There is a separate protection against conduct which is of a sexual nature. This type of harassment does not need in any way to relate to a protected characteristic.

This type of harassment occurs where:

- The perpetrator engages in conduct of a sexual nature.
- The conduct has the purpose or effect of:
 - Violating the victim's dignity, or
 - Creating an environment that is intimidating, hostile, degrading, humiliating or offensive to the victim.

Conduct of a sexual nature can include verbal, non-verbal or physical conduct, including unwelcome sexual advances, touching, forms of sexual assault, sexual jokes, displaying pornographic photographs or drawings or sending emails of a sexual nature. Again, if you do have a staff handbook which included a Dignity at Work Policy, it is advisable to clearly state which kind of behaviour is prohibited as they are likely to amount to sexual harassment under the EqA.

Example:

A young lady is at the start of her professional career. She was encouraged by her employer to attend as many networking events as possible to promote the company, which she did. She was later told at a staff party by a rather inebriated senior manager that 'the reason why we send you to these networking events is because people want to sleep with you'. In this case, this young lady had her wits about her and lodged a formal grievance with her employer. The grievance was taken seriously and complaint was investigated. In the end, the perpetrator formally apologised to the young lady for his lewd and inappropriate comment.

There are a couple of things to learn from the above situation. Firstly, the statement was made at a staff party which, even though it was after working hours, was (for the purposes of the EqA) still in the course of the girl's employment. This is also a good example of how sometimes the best way to deal with prohibited conduct is to address them informally and encourage the perpetrator to apologise before you move to a more formal grievance and disciplinary procedure.

With the above example in mind, as for standard harassment, if the purpose of the conduct is to violate the victim's dignity or

create an intimidating, hostile or degrading, humiliating or offensive environment, then the perpetrator may be liable even if it did not have that effect, or at least has not been shown to have that effect.

Conversely, if the effect of the conduct is to violate the victim's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment, then the perpetrator may be liable even if that was not the purpose of the conduct.

In deciding whether conduct has the effect of violating the victim's dignity or creating an environment that is intimidating, hostile, degrading, humiliating or offensive to the victim, a tribunal must take each of the following into account.

- The perception of the victim.
- The other circumstances of the case.
- Whether it is reasonable for the conduct to have that effect.

Hence, it will be no defence that the perpetrator would have behaved just the same to men, or women or both. So, in the example above if the senior partner said the exact same thing to a male employee at the staff party it would not have been a defence.

Less favourable treatment for rejecting or submitting unwanted conduct

The third type of harassment occurs when a worker is treated less favourably by the employer because that worker submitted to, or rejected unwanted conduct of a sexual nature, or unwanted conduct of a sexual nature, or unwanted conduct which is related to sex or to gender reassignment, and the unwanted conduct creates an environment that is intimidating, hostile, degrading, humiliating or offensive to the victim.

Example:

A junior staff member rejects the advances of a manager and is then turned down for a promotion which she believes she would have got if she had slept with her boss. This worker would then have a claim for harassment.

Under this type of harassment, the initial unwanted conduct may be committed by the person who treats the worker less favourably or by another person. This means that if she turned down the manager, but then the manager's best friend who also works at the same company, is treating her less favourably because she had turned down the manager,

she could have a claim of harassment over the best friend's actions.

The Concept of Purpose or Effect

It is very important to note that if the **purpose** of subjecting the worker to the conduct is to create an environment that is intimidating, hostile, degrading, humiliating or offensive to the victim, this will be sufficient to establish unlawful harassment. It will not be necessary to inquire into the effect of that conduct on that particular worker.

Regardless of the **intended purpose**, unwanted conduct will also amount to harassment if it has the **effect** of creating an environment that is intimidating, hostile, degrading, humiliating or offensive to the victim.

Unusual forms of harassment

Recently, an interesting article in Personnel Today appeared online. In this article, Steven Simmons ran through a list of 15 unusual forms of harassment that have been considered by Tribunals. The full article can be assessed at:

www.personneltoday.com/hr/employment-tribunals-15-unusual-forms-harassment/

A summary of the 15 unusual forms of harassment are listed below:

- *Teenager Jibe*: In an age discrimination case brought by a young worker, the tribunal held that the manager's use of the words "teenager" and "kid" to describe the claimant amounted to harassment.
- *Subordinates bullying a manager*: A common scenario for employers that operate in male dominated environments is that the male employees, who were not used to being managed by a woman, challenged the authority of a female manager which amounted to bullying.
- *Facebook sabotage*: Two members of staff took their heterosexual manager's mobile phone, without his permission, and posted a comment on the status update on his Facebook page saying "I'm gay and proud". This amounted to sexual orientation discrimination.
- *Shouting across the room*: The context of the remark can be critical. The EAT recently held that there was no religious harassment when a Catholic employee took offence that a colleague's expletive about the Pope shouted across a busy newsroom.
- *Bottom slapping*: In a sexual orientation harassment claim the tribunal found that when the restaurant in which the claimant worked was busy, the manager would "somewhat forcefully" direct waiters, sometimes by slapping their behind. Interestingly enough, although the manager had perhaps touched the claimant's bottom, the Tribunal found that this was not the basis of the claimant's sexual orientation.
- *Speaking in a foreign language*: This case was in the end unsuccessful, but it is still a good example of some problems that can occur when colleagues insist on communicating in their first language to the possible exclusion of other workers who do not speak this language.
- *Discriminatory graffiti*: It is possible to claim that you have been harassed after simply reading graffiti on a wall. The complaint was made in relation to racist graffiti in the toilets.
- *Toy helicopter and turban incident*: In this case, the claimant argued that a colleague's suggestion that a radio controlled toy helicopter, which was being flown around the office for laughs, landed on the flat surface of his turban amounted to religious harassment.
- *Discrimination by fancy dress*: An employment tribunal found that a gay employee was harassed at a workplace fancy-dress event, that he could not get out of, and that leant itself to banter of a sexual nature that could easily offend.
- *Hat-based harassment*: A Tribunal considered whether or not a manager harassed a black pub worker when he told him that he looked like a pimp when he was wearing a promotional St Patrick's Day hat.
- *Same sex harassment*: A man discriminated against another man by making sexual comments and gestures, not all of which were directed at the claimant.
- *Harassment by post*: A postcard depicting a group of bare breasted black women, sent by a work colleague from South Africa to a black police officer in the UK amounted to racial harassment.
- *Harassment by note kept on archived file*: A gay barrister was discriminated against when he discovered a memorandum in an archive that made derogatory comments about his sexual orientation.
- *Star Wars Nickname*: Evidence of age bias against an older worker included banter related to his age, including his colleagues nicknaming him Yoda.
- *Accidental harassment*: A job applicant was subjected to harassment when he was accidentally sent an internal email that he felt was dismissive of his application. A manager had accidentally replied to the job applicant rather than sending it to the employer's recruitment team. Harassment can also occur if an individual accidentally overhears a comment, even if the perpetrator does not know that individual is listening.

Practical Tips and Acas Guidance

ACAS has published useful guidance on bullying and harassment in the workplace directed towards both employees and employers. You can access guides through this link:

www.acas.org.uk/index.aspx?articleid=1392

Points of Good Practice

From a practical point of view, employers need to know how best to implement measures that will both enable employees to effectively action a grievance and protect them in the event of a complaint being made. It is relatively simple to do this by taking steps to ensure proper procedures are in place to deal with complaints.

From an employer's point of view, essentially, the following are suggested:

- issue a statement at management level that bullying and harassment will not be tolerated in the workplace, give examples of what constitutes bullying and harassment;
- issue a statement that bullying and harassment can be treated as disciplinary offences and ensure staff know what the disciplinary procedures are, how they operate and the associated timescales;
- outline steps that the company actively takes to avoid instances of bullying and harassment and state the responsibilities of supervisors and senior management in this regard;
- make it clear to staff that any complaint will be investigated expeditiously and in confidence.

In formulating policies relating to bullying and harassment, it is also suggested consulting with staff may be advantageous in order that staff feel that they have had real input. In terms of publishing the policy, it is suggested that details be included in staff handbooks or other similar workplace publications. It should be made clear who is the appropriate person for a complaint of this nature to be made to and also that the policy will be continuously monitored, maintained and, where necessary, updated. Training is also suggested for both employees and employers in relation to this area as well as information regarding where further advice can be sought and counselling obtained.

Action Plan

So what should you do if you feel that you are being harassed at work or bullied?

First of all, keep a diary of all incidents, record dates and potential witnesses and keep any written correspondence which relates to your complaint. Your complaint might be confidential and sensitive in nature and therefore you should find somebody in the workplace to whom you can talk to without feeling too uncomfortable. If your company has a grievance procedure, you should contact the appropriate person and submit a grievance. It does not have to be a formal written grievance at first instance as it may be possible to resolve the situation informally through informal talks and/or mediation.

If you can and you feel brave enough, you should tell the person to stop whatever it is they are doing that is causing you distress. Otherwise, they may not be aware of the fact their actions are having such an effect on you. This is very important in situations where the bullying or harassment could be seen as being in a grey area and where the conduct is not as overtly offending. You should also talk to your union representative if you have one and also call the free Acas line for further advice.

It is important to remember that if you feel that you have been bullied or harassed, you should not be afraid to be accused of over-reacting or worried about that you would not be believed if you do report the incident. The situation may have come to a point where it is a last straw situation and you should not feel any fear of retribution if you do make a complaint. As set out above, behaviour that is considered bullying by one person may be considered firm management by another. It is therefore important that you are clear in your complaint and have as much documentation as possible.

Final words

It is very clear that it should be in every employer's interest to promote a safe, healthy, fair and dignified environment in which employees can work. Employers should also be aware that there may be health and safety issues as the HSE reminds employers that looking after the health of employees includes taking steps to make sure that employees do not suffer stress-related illness as a result of work.

All organisations, regardless of size, should also have policies and procedures dealing with misconduct, grievance and disciplinary matters. It is also important to look at your own management style as an authoritarian management style may in fact encourage bullying and harassment in the workplace. You should also ensure that when dealing with alleged bullying and harassment under your disciplinary rules and procedures and grievance procedures, you should ensure that you have made appropriate provisions for confidentiality and support for the victims.

You should also remember that the victim is not always the person that is complaining about harassment. If the harassment is completely unfounded and contrived, it can have a very detrimental effect on the person that's being complained about. For example if a young female employee complains about an older male employee saying that he has been looking at her in an inappropriate way or made rude and sexual comments to her and this is completely untrue, the male employee may complain of bullying as a cross grievance as being accused of having done something like this is likely to make the male employee feel intimidated or insulted and humiliated. The bottom line is, always get to the root of the problem. The chances are that it's just the tip on the iceberg.

Further Information

Bullying at work is costing British industry more than £7billion a year. Some time ago, a 30-month study by British Occupational Health Foundation showed 18.9 million working days were lost a year as a direct result of workplace bullying and one in five people considered themselves to be bullied at work.

Legislation, including the Protection from Harassment Act, exists to deal with the problem of bullying and harassment at work but the law that is usually invoked is the Health and Safety at Work Act 1974, which says that employers have a duty of care for their employees, their health, safety and welfare. That includes mental welfare. If an employee can prove the law has been breached in any way, there is a case to go forward for constructive unfair dismissal.

The Public Interest Disclosure Act 1998 gives protection to workers who "*blow the whistle*" on wrongdoing at work. They cannot be victimised or dismissed.

This guide is for general interest - it is always essential to take advice on specific issues.

We believe that the facts are correct as at the date of publication, but there may be certain errors and omissions for which we cannot be responsible.

References and Acknowledgement:

¹ Under the Equality Act 2010, harassment is unlawful: www.gov.uk/workplace-bullying-and-harassment

² We acknowledge the assistance provided by Sofie Persson, an employment lawyer with Hove-based Engleharts, in writing the main text for this publication: She heads up the firm's Employment department specialising in all aspects of employment law with a particular interest in Tribunals and drafting employment contracts, staff handbooks and settlement agreements. She can be contacted at +44 (0)1273 204411 or by email to sofie@engleharts.co.uk www.engleharts.co.uk



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