

Bullying and harassment at work – the pitfalls for employers

A Guest Article by Steven Eckett
September 2011

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A crucial workplace issue that employers must address

Dignity at work has become increasingly recognised as an important issue for employers to address, given the increasing raft of legislation designed to protect employees. It is therefore vital for employers to be seen to be addressing bullying and harassment in the workplace.

Appropriate action may be crucial in avoiding increased levels of stress, combined with low staff morale, increased staff absenteeism, high staff turnover and decreased productivity. All of these ingredients have the ability to seriously affect profits and eat into budgets.

Employers are also increasingly likely, at some point, to be at risk of a legal claim, either in the employment tribunal or in the civil courts. There is the added threat of damage to the business reputation from unwelcome media publicity.

Definitions of bullying and harassment

There is actually no legal definition of bullying. Usually it means that an employee is exposed to some form of unwarranted behaviour that has a detrimental effect on their well-being. However, the concept of bullying overlaps with the concept of harassment.

The Equality Act 2010 defines harassment as unwanted conduct related to a list of protected characteristics that has the purpose or effect of "violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment" for them.

The protected characteristics referred to include a person's sex (including marital or civil partnership status), race, disability, age, sexuality, gender reassignment status, religion or belief, even if the perception by the perpetrator of the unwelcome conduct is incorrect.

Vicarious liability of employers

It is vitally important for employers to remember that they are also vicariously liable in law for the actions and omissions of their employees, and also of third parties such as freelancers, clients and consultants, and that bullying and harassment also extends to acts and omissions that take place outside the workplace – for example, at a works function or party.

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Claims relating to bullying and harassment

The types of claim that affected employees can bring include a statutory claim for constructive dismissal in the employment tribunal where, for example, such unwanted conduct and harassment, if not resolved, can lead to a fundamental breach of contract entitling the employee to resign. Such proceedings must be issued within three months of the last act of harassment or bullying.

Equality Act 2010

Furthermore, all of the United Kingdom's current anti-discrimination laws are now contained in the Equality Act 2010, where affected employees can also bring a claim if such harassment is related to the protected characteristics mentioned above.

The Equality Act also makes it unlawful to discriminate by association. So, for example, if an employee is harassed in the workplace because they have a disabled relative or a gay relative, then that affected employee will also have a remedy under the Equality Act in the employment tribunal.

In addition, employers are exposed if they are aware that members of their staff are being harassed by third parties in the workplace and they have failed to take reasonable steps to prevent such harassment. Employers may get caught where members of their staff are harassed by members of the public with whom they deal in the course of their normal duties.

Employers also need to remember that the amount of compensation that employment tribunals can award is unlimited.

Protection from Harassment Act 1977

Another claim for employers to be aware of is the Protection from Harassment Act 1977. This was initially implemented to deal with the problem of unwanted stalkers as a civil protection measure. Over the years the law has been applied to harassment and bullying in the workplace, although this type of claim can only be brought in the civil courts as opposed to the employment tribunal.

Here the limitation period is six years, and generally it will take longer for the case to be dealt with.

The main issue for employers is therefore to ensure that they have taken all steps that are necessary and have sufficient mechanisms in place to avoid any legal challenges and to reduce overall liability and exposure.

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This is especially important for any claims brought under the Equality Act 2010, where employers have a special defence if they can show that they took practical steps in order to prevent harassment from taking place.

Guarding against bullying and harassment claims

Here are a few tips for employers to take note of in order to try to strengthen their position when faced with complaints of workplace bullying and harassment:

- Draw up a set of comprehensive anti-bullying and anti-harassment policies, clearly defining what constitutes bullying and harassment and illustrating unacceptable forms of conduct and behaviour. These policies should also actively encourage the reporting of harassment and bullying to a range of colleagues, in case the perpetrator happens to be the employee's line manager.
- Train staff and managers on the implementation of anti-harassment policies and task managers with responsibility and make this part of any induction process for all new members of staff.
- Try to encourage a workplace culture that makes it clear to everyone that bullying and harassment are unacceptable. This can include a whistleblowing policy that actively encourages staff to report such unwelcome conduct, even if they are not themselves a victim but are aware of problems in the workplace, with full confidentiality.
- Ensure that these policies are easy to find in a staff manual or on the workplace intranet, with regular reminders about their importance.
- Regularly review disciplinary and grievance procedures and ensure that they list examples of gross misconduct to include bullying and harassment. Ensure that you include the right to suspend on full pay any members of staff who are accused of bullying and harassment and that all allegations are thoroughly investigated. It is a good idea to produce written and signed witness statements and for the investigating officer to write up a comprehensive report of all findings, together with any recommended action.
- Have comprehensive IT and telecommunications policies that cover bullying and harassment by email, internet and mobile phone, making it clear that this form of conduct and behaviour is totally unacceptable.

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- Where an individual has been found to have bullied or harassed an employee, ensure that your disciplinary procedure is implemented. This will reinforce the message to all staff that bullying and harassment is unacceptable. This includes managers who have been trained on, and fail to follow, internal anti-harassment policies, thus prolonging an employee's suffering. Measures can include summary dismissal, demotion, removal to another part of the workplace, and removal of management responsibilities.
- Ensure that you have in place good dispute resolution procedures that both affected employees and managers can consider before any formal grievance procedure is implemented.
- Asking questions about staff morale during staff appraisals may identify workplace problems that need to be monitored.

In summary, employers need to be aware of the risk that their businesses can be exposed to if they do not treat complaints of bullying and harassment seriously or do not have adequate policies and procedures in place.

It is likely that many larger organisations are on top of the problem. However, any smaller businesses that do not have adequate HR support mechanisms need to be alert to the risks involved in failing to deal with these issues, as the law applies to all employers, regardless of their size and resources.

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This information was correct to the best of our knowledge and belief at the time it was submitted. It is, however, written as a general guide, and is not intended to apply to specific circumstances. The content should not, therefore, be regarded as constituting legal advice and should not be relied on as such. Accordingly, we recommend that specific professional advice be sought before any action is taken.

If you would like more information on any of the points covered in this Guest Article, please contact **TCii** on **020 7099 2621**.