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Taking measures to eradicate bullying in the workplace

Following recent allegations of a bullying culture in Westminster, bullying in the workplace has once again become a topical issue. So what legal obligations do employers face to ensure bullying-free workplaces?



Bullying and harassment can give rise to claims under the Protection from Harassment Act

What potential liabilities could employers face if issues arise and are not adequately dealt with? What steps and procedures should employers put in place to tackle potential problems and protect themselves from potential liability?

Acas guidance defines bullying as “offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient.”

Harassment is defined in the Equality Act 2010 as “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 environment for that individual.”

Harassment under the Equality Act must relate to a specific protected characteristic: age, disability, gender reassignment, race, religion and belief, sex and sexual orientation.

Bullying and harassment in the workplace can damage morale and employee relations, lead to poor performance, reduced productivity, increased absences and resignations, and ultimately damage a company’s reputation. It can also lead to legal liability for the employer who may face claims both in the employment tribunals and civil courts.

Employers have both common law and statutory duties to ensure the health, safety and welfare at work of their employees. The HSE Management Standards for work-related stress make it clear that this includes the need for employers to promote positive working to avoid conflict and deal with unacceptable behaviour such as bullying and harassment.

A failure by an employer to comply with its obligations under health and safety law by failing to deal with bullying and harassment in the workplace can result in employers facing claims for physical and psychiatric personal injury in the civil courts.

Such claims are based on the law of negligence, on the basis that the employer has breached its duty of care to the employee, or breach of contract – often the implied contractual term to take reasonable steps to ensure the health and safety of employees at work or the implied term of trust and confidence. Damages awarded in such cases can potentially be substantial if the personal injury affects the ability of the employee to work in the future.

Claims can also be brought in the employment tribunals. Constructive dismissal occurs where an employee resigns from their employment in response to a fundamental breach of their employment contract by the employer. This can either be an express term or an implied term, such as in relation to health and safety or trust and confidence (as mentioned above). An employee who is constructively dismissed can claim that they have been unfairly dismissed and also claim notice pay.

Where the bullying behaviour amounts to harassment under the Equality Act 2010 this can lead to employment tribunal claims for unlawful discrimination. Compensation for discrimination is uncapped and can include an award for injury to feelings.

Finally, bullying and harassment can give rise to claims under the Protection from Harassment Act 1997. This is likely to be appropriate only in more serious cases.

Employees who have been subjected to bullying and harassment at work have a number of different options as to the claims they may bring. It is often possible to bring a combination of claims and the approach taken will depend on the particular circumstances of the case. Employers can therefore face significant liabilities as well as reputational damage.

How to mitigate these risks

- Acknowledge that bullying and harassment are problems for the organisation and will not be tolerated;
- Have a clear policy on bullying and harassment in the workplace;
- Provide training to managers and all staff;
- Create a culture in which employees can raise concerns and are supported if they do so;
- Maintain fair and effective disciplinary and grievance procedures for dealing with complaints by employees;
- Deal with complaints by employees fairly, confidentiality and sensitively;
- Put in place a counselling service or employee assistance programme to support employees;
- In some cases it may be possible to rectify matters informally, for example where people are not aware that their behaviour is unwelcome;
- Use workplace mediation, where appropriate, to deal with disagreements between employees at an early stage;
- Where informal resolution is not possible, ensure that formal disciplinary procedures are followed fairly and consistently;
- In cases which appear to involve serious misconduct, a short period of suspension of the alleged bully/harasser may be necessary. This should be on full pay (unless the contract of employment gives a clear right for you to do otherwise), should be for no longer than necessary and should be kept under review. This is so as to avoid the suspension itself becoming a disciplinary penalty;
- Do not transfer the person making the complaint unless they have requested such a move;
- Where somebody makes an unfounded complaint for malicious reasons this should also be dealt with fairly and objectively under the disciplinary procedures;
- Ensure that disciplinary penalties imposed for bullying and harassment are reasonable and proportionate in the circumstances of the case; and
- Keep policies and procedures under continuous review to see if they can be improved.

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