

Bullying And Harassment At Work - A Guide For Managers And Employers

Everyone should be treated with dignity and respect at work. Bullying and harassment of any kind are in no-one's interest and should not be tolerated in the workplace. This leaflet is designed to offer practical advice to employers to help them prevent bullying and harassment and to deal with any cases that occur. It includes guidelines for the development of policies and procedures.

(1) What are bullying and harassment?

Examples and definitions of what may be considered bullying and harassment are provided below for guidance. For practical purposes those making a complaint usually define what they mean by bullying or harassment — something has happened to them that is unwelcome, unwarranted and causes a detrimental effect. If employees (2) complain they are being bullied or harassed, then they have a grievance which must be dealt with regardless of whether or not their complaint accords with a standard definition.

How can bullying and harassment be recognised?

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 intended to undermine, humiliate, denigrate or injure the recipient.

Harassment, in general terms, is

unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.

Behaviour that is considered bullying by one person may be considered firm management by another. Most people will agree on extreme cases of bullying and harassment but it is sometimes the 'grey' areas that cause most problems. It is good practice for employers to give examples of what is unacceptable behaviour in their organisation and this may include:

- spreading malicious rumours, or insulting someone (particularly on gender/race/disability grounds)
- copying memos that are critical about someone to others who do not need to know
- ridiculing or demeaning someone — picking on them or setting them up to fail
- exclusion or victimisation
- unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances — touching, standing too close, display of offensive materials
- making threats or comments about job security without foundation

- deliberately undermining a competent worker by overloading and constant criticism
- preventing individuals progressing by intentionally blocking promotion or training opportunities

Bullying and harassment are not necessarily face to face, they may be by written communications, electronic (e)mail (so called 'flame-mail'), phone, and automatic supervision methods — such as computer recording of downtime from work, or recording of telephone conversations — if these are not universally applied to all workers.

Bullying and harassment can often be hard to recognise — they may not be obvious to others, and may be insidious. The recipient may think 'perhaps this is normal behaviour in this organisation'. They may be anxious that others will consider them weak, or not up to the job, if they find the actions of others intimidating. They may be accused of 'overreacting', and worry that they won't be believed if they do report incidents.

People being bullied or harassed may sometimes appear to overreact to something that seems relatively trivial but which may be the 'last straw' following a series of incidents. There is often fear of retribution if they do make a complaint. Colleagues may be reluctant to come forward as witnesses, as they too may fear the consequences for themselves. They may be so relieved not to be the subject of the bully themselves that they collude with the bully as a way of avoiding attention.

Why do employers need to take action on bullying and harassment?

Bullying and harassment are not only unacceptable on moral grounds but may, if unchecked or badly handled, create serious problems for an organisation including:

- poor morale and poor employee relations
- loss of respect for managers and supervisors
- poor performance
- lost productivity
- absence
- resignations
- damage to company reputation
- tribunal and other court cases and payment of unlimited compensation.

It is in every employer's interests to promote a safe, healthy and fair environment in which people can work.

The 1991 European Commission code '*Protection of Dignity of Men and Women at Work*', highlights the need for employers to develop and implement coherent policies to prevent harassment. In addition, various laws place responsibilities on employers to protect employees and these are outlined below.

The legal position

There is no specific legal definition of bullying, and harassment is interpreted in UK law only in relation to the Sex Discrimination Act 1975 as it implements the EC Code. Employers have a duty of care for all their workers and liability at common law and under the following laws:

Sex Discrimination Act 1975
Race Relations Act 1976
Disability Discrimination Act 1995

Under these Acts harassment may be considered to be discrimination.

Health and Safety at Work Act 1974 (employers are responsible for the health, safety and welfare at work of all employees, and are liable for the actions of their employees at work) (3)

Employment Rights Act 1996 incorporates an employee's right to claim 'unfair constructive dismissal,' when an employee resigns in the face of the employer's breach of contract, which may include failure to protect their health and safety at work

Criminal Justice and Public Order Act 1994 (this created a criminal offence of 'intentional harassment', whether in the workplace or elsewhere)

Protection from Harassment Act 1997 (this also created a criminal offence of harassment, and a right to damages for the victim).

What should employers do about bullying and harassment?

First, consider framing a formal policy. This need not be over-elaborate, especially for small firms, and might be included in other personnel policies, but a checklist for a specific policy on bullying and harassment could include the following:

- statement of commitment from senior management
- acknowledgement that bullying and harassment are problems for the organisation
- clear statement that bullying and harassment will not be tolerated
- examples of unacceptable behaviour
- statement that bullying and harassment may be treated as disciplinary offences
- the steps the organisation takes to prevent bullying and harassment
- responsibilities of supervisors and managers
- confidentiality for any complainant
- reference to grievance procedures (formal and informal), including timescales for action
- investigation procedures, including timescales for action
- reference to disciplinary procedures, including timescales for action counselling and support availability (see page 8 for further information on counselling)
- training for managers
- protection from victimisation
- how the policy is to be implemented, reviewed and monitored.

The statement of policy will gain additional authority if staff are involved in its development. It should be made clear that the policy applies to staff on and off the premises, including those working away from base. The policy should also make plain that bullying or harassment of staff by visitors to the organisation will not be tolerated.

All organisations, large and small, should have policies and procedures for dealing with grievance and disciplinary matters. Staff should know to whom they can turn if they have a work-related problem, and managers should be trained in all aspects of the organisation's policies in this sensitive area.

Second, set a good example. The behaviour of employers and senior managers is as important as any formal policy. Strong management can unfortunately sometimes tip over into bullying behaviour. A culture where employees are consulted and problems discussed is less likely to encourage bullying and harassment than one where there is an authoritarian management style. The organisation must make it clear that bullying and harassment are unacceptable.

Third, maintain fair procedures for dealing promptly with complaints from employees. Complaints of bullying and harassment can usually be dealt with using clear grievance and disciplinary procedures. Such procedures should have provision for confidentiality, and for both the person making the complaint and the subject of the complaint to be accompanied by a fellow employee or trade union representative of their choice [the right to be accompanied at grievance hearings is set out in the Employment Relations Act 1999].

Fourth, set standards of behaviour — an organisational statement to all staff about the standards of behaviour expected can make it easier for all individuals to be fully aware of their responsibilities to others.

This may include information about what constitutes bullying and harassment. Many organisations find it helpful to supplement basic information with guidance booklets and training sessions or seminars. Training can also increase everyone's awareness of the damage bullying and harassment does both to the organisation and to the individual. Your staff handbook is also a good way of communicating with employees, and can include specific mention of the organisation's views on bullying and harassment and their consequences.

Fifth, let employees know that complaints of bullying and/or harassment, or information from staff relating to such complaints, will be dealt with fairly and confidentially and sensitively. Employees will be reluctant to come forward if they feel they may be treated unsympathetically or are likely to be confronted aggressively by the person whose behaviour they are complaining about.

How should employers respond to a complaint of bullying and/or harassment?

Investigate the complaint promptly and objectively. Take the complaint seriously. Employees do not normally make serious accusations unless they feel seriously aggrieved. The investigation must be seen to be objective and independent. Decisions can then be made as to what action needs to be taken.

Informal approaches

In some cases it may be possible to rectify matters informally. Sometimes people are not aware that their behaviour is unwelcome and an informal discussion can lead to greater understanding and an agreement that the behaviour will cease. It may be that the individual will choose to do this themselves, or they may need support from personnel, a manager, an employee representative, or a counsellor.

Counselling

In both large and small organisations counselling can play a vital role in complaints about bullying and harassment, by providing a confidential avenue for an informal approach, and perhaps the opportunity to resolve the complaint without need for any further or formal action. Some organisations are able to train staff from within, others may contract with a specialist counselling service. Employee assistance programmes are counselling services provided and paid for by the employer and free to the employee. The contact number for the Employee Assistance Professionals Association is given on page 12. Business organisations may also be able to help in providing advice on accessing good counselling services.

Counselling can be particularly useful where investigation shows no cause for disciplinary action, or where doubt is cast on the validity of the complaint. Counselling may resolve the issue or help support the person accused as well as the complainant.

Disciplinary procedures

Where an informal resolution is not possible, the employer may decide that the matter is a disciplinary issue which needs to be dealt with formally at the appropriate level of the organisation's disciplinary procedure. As with any disciplinary problem it is important to follow a fair procedure. In the case of a complaint of bullying or harassment there must be fairness to both the complainant and the person accused.

Detailed guidance on how to handle disciplinary matters is available in the ACAS Advisory Handbook *Discipline at Work*. The ACAS Code of Practice *Disciplinary Practice and Procedures in Employment* is reproduced in the Handbook and provides advice on good practice in disciplinary matters which is taken into account in relevant cases appearing before employment tribunals. Briefly, a disciplinary procedure should

- provide for matters to be dealt with quickly;
- ensure that individuals are made fully aware of what their disciplinary offence is;
- state the type of disciplinary action and who can take it;
- provide for a full investigation which gives individuals an opportunity to state their case;
- allow individuals to be accompanied by an employee representative or a colleague;
- not permit dismissal for a first offence (except for gross misconduct);
- ensure an explanation is given for disciplinary action;
- specify an appeals procedure.

In cases which appear to involve serious misconduct, and there is reason to separate the parties, a short period of suspension of the alleged bully/harasser may need to be considered while the case is being investigated. This should be with pay unless the contract of employment provides for suspension without pay in such circumstances. A

suspension without pay, or any long suspension with pay, should be exceptional as these in themselves may amount to disciplinary penalties. Do not transfer the person making the complaint unless they ask for such a move.

There may be cases where somebody makes an unfounded allegation of bullying and/or harassment for malicious reasons. These cases should also be investigated and dealt with fairly and objectively under the disciplinary procedure.

What should be considered before imposing a penalty?

The action to be taken must be reasonable in the light of the facts. In some cases it may be concluded that a penalty is unnecessary or that counselling or training is preferable — the individual may now be more able to accept the need to change their behaviour. Where a penalty is to be imposed, all the circumstances should be considered including: the employee's disciplinary and general record; whether the procedure points to the likely penalty; action taken in previous cases; any explanations and circumstances to be considered and whether the penalty is reasonable.

Oral or written warnings, suspension or transfer of the bully/harasser are examples of disciplinary penalties that might be imposed in a proven case. Suspension or transfer (unless provided for in the employee's contract or agreed by the employee), could breach the employee's contract if they suffer a detriment by it, for instance a transfer to a different location which means additional expense or a less responsible job. Any such breach could lead to a claim of constructive dismissal by the affected employee.

Where bullying or harassment amounts to gross misconduct, dismissal without notice may be appropriate.

Whenever a case of bullying or harassment arises, employers should take the opportunity to examine policies, procedures and working methods to see if they can be improved — the advice given earlier in this leaflet may be helpful.

Useful contacts

The Commission For Racial Equality
Elliot House
10-12 Allington Street
London
SW1E 5EH
Tel: 020 7828 7022

The Equal Opportunities Commission
Overseas House
Quay Street
Manchester M3 3 HN
Tel: 0161 833 9244

Disability Discrimination Act Helpline 0345 622 633

Employee Assistance Programmes information is available from
EAPA
2 Dovetale Studios
465 Battersea Park Road
London SW11 4LR
0800 783 7616

Suggested further reading

Harassment at Work V Edmunds, M Hopkins, A Williams. Jordans Publishing Ltd, Bristol, 1998.
Sensitive Issues in the Workplace S Morris. The Industrial Society, London, 1993.

No Excuse: Beat bullying at work — the pack includes video, facilitator's guide, TUC guide for trade union representatives and personnel managers, and a book *Harassment, Bullying and Violence at Work* by Angela Ishmael and Bunmi Alemoru. The Industrial Society, London, 1999.
Footnotes

(1) This leaflet was revised at the date of printing — see date on front cover. Legal information is provided for guidance only, and should not be regarded as an authoritative statement of the law, which can be given only by the courts. Legal considerations must be looked at in the light of the particular circumstances, and it may be wise to seek legal advice. ACAS Public Enquiry Points can provide information on employment matters but cannot provide legal advice on particular cases. Other sources of information include employers' associations, trade unions and professional organisations, citizens advice bureaux and lawyers.

(2) The term 'employees' is used to cover all those who work for someone else rather than on their own account, regardless of whether they are employed strictly under a contract of employment.

(3) The Health and Safety Executive has produced Guidance on Stress in the Workplace, which includes the advice that employers have "a legal duty to take reasonable care to ensure health is not placed at risk through excessive and sustained levels of stress arising from the way work is organised, the way people deal with each other at their work, or from the day-to-day demands place on their workforce. Stress should be treated like any other health hazard."

For Public Enquiry Points and Office Locations see our [Contact us](#) page