

Advice leaflet - 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.

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 employees¹ 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 the grounds of age, race, sex, disability, sexual orientation and religion or belief)
- 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

Discrimination and harassment

It is not possible to make a direct complaint to an employment tribunal about bullying. However, employees might be able to bring complaints under laws covering discrimination and harassment. For example:

- **sex:** the Sex Discrimination Act gives protection against discrimination and victimisation on the grounds of sex, marriage or because someone intends to undergo, is undergoing or has undergone gender reassignment
- **race:** the Race Relations Act 1976 gives protection against discrimination and victimisation on the grounds of colour or nationality. The regulations that amended the Act (Race Regulations 2003) also give a stand alone right to protection from harassment on the grounds of race and ethnic or national origin
- **disability:** the Disability Discrimination Act 1995 gives protection against discrimination and victimisation
- **sexual orientation:** the Employment Equality (Sexual Orientation) Regulations 2003 give protection against discrimination and harassment on the grounds of sexual orientation (orientation is defined as 'same sex' - lesbian/gay - 'opposite sex' - heterosexual - and 'both sexes' - bisexual)
- **religion or belief:** the Employment Equality (Religion or Belief) Regulations 2003 give protection against discrimination and harassment on the grounds of religion or belief.
- **Age:** the Employment Equality (Age) Regulations 2006 give protection against discrimination and harassment on the grounds of age.

Harassment

The current definition of harassment - as applied to age, sexual orientation, religion or belief and race and ethnic and national origin is:
"unwanted conduct that violates people's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment."

Unfair dismissal

Employers have a 'duty of care' for all their employees. If the mutual trust and confidence between employer and employee is broken - for example, through bullying and harassment at work - then an employee can resign and claim 'constructive dismissal' on the grounds of breach of contract. Employers are usually responsible in law for the acts of their workers.

Health and safety

Breach of contract may also include the failure to protect an employee's health and safety at work. Under the Health and Safety at Work Act 1974 employers are responsible for the health, safety and welfare at work of all employees.

The Health and Safety Executive (HSE) is currently focusing on the issue of stress at work. HSE defines stress as "the adverse reaction a person has to excessive pressure or other types of demand placed upon them". In Tackling work-related stress 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". For more information visit www.hse.gov.uk.

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
- 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. 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 and grievances at work \(section 1 of 2\)](#). The Acas  [Code of Practice - Disciplinary and grievance procedures](#) 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.

As part of the Employment Act 2002, the government introduced standard internal systems for dealing with dismissal, and discipline and grievance issues. These systems require employers and employees to follow a minimum 'three-step' procedure - involving a statement (setting out in writing the grounds for action or grievance), a meeting between the parties and the right to appeal. The new provisions apply to all employers, no matter how many employees they have. For further information see the Acas Code of Practice – Disciplinary and grievance procedures.

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.

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. All employers contemplating dismissal - or action short of dismissal such as loss of seniority or pay - must, as a minimum, follow a three-step statutory procedure. For further information see the Acas Code of Practice – Disciplinary and grievance procedures.

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

Commission for Racial Equality

Tackling racial discrimination and promoting racial equality

Tel 020 7939 0000

www.cre.gov.uk

Disability Rights Commission

Providing information and advice to disabled people and employers about their rights and duties

Tel 08457 622 633

www.drc.org.uk

Equal Opportunities Commission

Working to eliminate sex discrimination

Tel 08456 015 901

www.eoc.org.uk

Suggested further reading

Bully in Sight by Tim Field, published by Success Unlimited in 1996.

Harassment, bullying and violence at work by Angela Ishmael with Bunmi Alemoru, published by The Industrial Society in 1999.

Tackling work-related stress - a guide for employees, published by HSE Books, publication orderline tel: 01787 881165

Notes

(1) 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.

(2) 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. The [Helpline numbers 08457 474747](#) can provide information on employment matters but cannot provide legal advice on particular cases. Other sources of information and advice for employees include trade union representatives, citizens advice bureaux, and lawyers.

Last printed version: August 2006

Last updated web version: September 2006