

Employment

Bullying and Harassment at Work – Part 2 of 2

Last time, we explained the definitions of bullying and harassment, gave examples and explained what your obligations are as an employer. In this second part, we address when an employee can bring a claim, what claims they might bring, how much this could cost your business and what you can do to prevent bullying and harassment.

When can an employee claim harassment?

The definition of harassment, together with the list of protected characteristics, is contained in part 1 this article. In order to claim harassment, the complainant need not possess the relevant characteristic themselves; the harassment can be because of their association with a person who has a protected characteristic, or because they are wrongly perceived to have one, or are treated as if they do. Harassment applies to all protected characteristics except for pregnancy and maternity where any unfavourable treatment may be considered discrimination, and marriage and civil partnership where there is no significant evidence that it is needed.

An employee can make a complaint against their employer where they are harassed by someone who doesn't work for that employer such as a customer or client.

What claims might an employee bring?

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 at an Employment Tribunal, on the grounds of breach of contract (as long as they have worked for the employer for two years).

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.

If an employee is successful at an employment tribunal, what might the cost be to the organisation?

If an employee is able to successfully claim harassment there is no limit to the amount of compensation that they may be awarded. Alternatively or in addition, employees may be able to claim unfair dismissal, which may result in a compensation award of up to one year's salary (or the statutory cap (currently £80,541), whichever is higher).

What can we do to prevent bullying and harassment at work?

First, 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, the business should have a specific policy on bullying and harassment. This should include: a statement of commitment from senior management; a clear statement that bullying and harassment is unlawful, will not be tolerated and that decisions should not be taken on the basis of whether someone submitted to or rejected a particular instance of harassment; examples of unacceptable behaviour; a statement that bullying and harassment may be treated as disciplinary offences; the steps the organisation takes to prevent bullying and harassment; confidentiality of any complaint; and protection from victimisation. 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.

Third, 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.

Finally, 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.

Our Employment team can assist by creating suitable policies and providing advice on the procedure for dealing with any employee relations issues. Please contact us for assistance.

Emma O'Meara
Solicitor/ Head of Employment
E: emma.omeara@3hracs.com



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