



PrivateEdge

Bullying and harassment in the workplace - a best practice guide

This guidance offers practical advice to businesses to help prevent bullying and harassment in the workplace and to deal with any cases that occur. Following this guidance will help reduce the risk of successful claims by employees and help ensure good workplace morale.

Introduction

Where bullying occurs in the workplace, employees may bring complaints under laws covering discrimination (in particular for harassment) if the bullying relates to any of the protected characteristics under the Equality Act 2010 (race, sex, disability, sexual orientation, age, or religion or belief). Bullying and harassment can also give rise to claims for constructive unfair dismissal. Where the bullying and harassment has resulted in physical injury or stress, depression or anxiety, it could lead to claims for personal injury or claims under the Protection from Harassment Act in the civil courts.

Even if you are unaware that bullying and harassment has been taking place in your workplace, your business is highly likely to be found liable for the actions of your employees for any of their unlawful acts that take place within the scope of their employment. This can include acts outside of the physical workplace, such as bullying over social media or at work related social events. Individual employees can also be personally liable for bullying and harassment alongside the business itself.

To reduce the risk to your business of successful claims, it is crucial to have an effective bullying and harassment policy in place. AIG provides PrivateEdge policyholders with access to a free template bullying and harassment policy. It can be downloaded [<here>](#).

What is bullying and harassment?'

The ACAS Guidance to Bullying and Harassment in the Workplace 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 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.

A single incident can amount to bullying and harassment. A person may be harassed even if they were not the intended "target". Harassment also includes treating someone less favourably because they have submitted or refused to submit to such behaviour in the past.

Examples of bullying and harassment include:

- Spreading malicious rumours or insulting someone (particularly on the grounds of race, sex, disability, sexual orientation, age and religion or belief)
- Subjecting someone to offensive jokes and banter
- Exclusion from work related activities – this can include social events outside work
- Unwelcome sexual advances – including touching, standing too close, asking personal questions
- Unwanted physical contact or "horseplay"

- Offensive e-mails, text messages, or social media content
- Overbearing supervision or other misuse of power or position
- Giving information that is critical about someone to others who do not need to know
- Ridiculing or demeaning someone – picking on them and setting them up to fail
- Making threats or comments about job security without foundation
- Deliberately undermining a competent worker by overloading and constant criticism
- Blocking promotion or training opportunities

What should my business do to help prevent bullying and harassment?

- Introduce and implement a bullying and harassment policy. Ensure that all staff and managers are briefed on the policy and the sorts of conduct that are considered unacceptable. Re-brief the policy at regular intervals.
- Let employees know that complaints of bullying and/or harassment, or information from staff relating to such complaints, will be dealt with fairly 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.
- Ensure that managers set a good example. The behaviour of senior managers is as important as any formal policy. Authoritarian management can unfortunately sometimes tip over into bullying behaviour. Managers should equally be as much subject to the bullying and harassment policy as the rest of your staff.
- Introduce and maintain a grievance procedure for dealing promptly with complaints from staff, and ensure that it is followed.
- Introduce a disciplinary procedure and implement it where there is evidence to reasonably suspect that bullying and harassment has taken place.

What should my business do if a complaint of bullying or harassment is received?

- Take the complaint seriously. Follow your Grievance Procedure if the staff member confirms that the complaint is raised as a formal grievance.
- Investigate the complaint promptly and objectively. Ensure that the investigation is objective and independent. You must look for evidence that support both the victim and the person accused. Decisions can then be made as to what action needs to be taken.
- Consider all the circumstances before reaching a conclusion, and particularly the perception of the complainant as harassment is often felt differently by different people.
- Having gathered all the evidence, ask yourself “could what has taken place be reasonably considered to have caused offence?” If the answer is yes, then consider whether it is appropriate to invoke your disciplinary procedure.
- For less serious cases, it may be possible to rectify matters informally. This will not be appropriate for serious cases of bullying or harassment, or where the person accused has been warned about similar conduct in the past. Consider whether the person accused needs support to help modify their behaviour, such as re-briefing, training, guidance from managers, or counselling.



- If the evidence from the investigation supports a reasonable suspicion that bullying and harassment has taken place, and it is not appropriate to deal with the issue informally, you should implement and follow your disciplinary procedure. The employee suspected should be charged with misconduct or gross misconduct depending on the seriousness of the offence. They must be given the opportunity to state their case at a disciplinary hearing at which they have the right to be represented by a colleague or trade union representative. They must be given the chance to appeal any disciplinary penalty.
- It may be that the allegations are found to be unfounded. However, just because an allegation is unfounded does not necessarily mean it is made maliciously – the employee making the complaint might have a genuine but mistaken belief that they have been bullied. If you suspect the complaint might have been made maliciously, this should be investigated and dealt with fairly and objectively under your disciplinary procedure.
- Before determining any disciplinary penalty make you sure you take in to consideration all of the relevant circumstances and potential mitigating factors, even for serious acts of bullying. Factors to consider include: the seriousness of the offence, the employee’s previous disciplinary record (taking care not to take into account any “spent” warnings), action taken in similar cases previously, and any explanations and circumstances that ought to be taken in to consideration.

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Legal advice in black and white

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