



## **Bullying and Harassment in the Workplace – What are the employer’s responsibilities?**

In the current economic climate, bullying and harassment claims brought by employees are becoming more common and the employer must ensure that they are prepared if a complaint is made and ready to implement steps to ensure that the matter is rectified promptly.

### **What is Bullying and Harassment?**

Bullying has been defined in the code of practice of the Health and Safety Authority as being repeated inappropriate behaviour direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others at the place of work and /or in the course of employment, which could reasonably be regarded as undermining the individuals right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but as a once off incident is not considered to be bullying.

Harassment is defined as being any act or conduct by the alleged offender (including, without prejudice to the generality, spoken words, gestures or the production, display or circulation of written words, pictures or other material) constitutes harassment of the complainant if the action or other conduct is unwelcome to the complainant and could reasonably be regarded, in relation to the relevant characteristic of the complainant, as offensive, humiliating or intimidating to the complainant. Harassment is governed by the Employment Equality Act 1998 and the Equal Status Acts 2000 to 2004.

The legislation prohibits discrimination on the following nine grounds:

- The gender ground: A man, a woman or a transsexual person (specific protection is provided for pregnant employees or in relation to maternity leave);
- The marital status ground: Single, married, separated, divorced or widowed;
- The family status ground: A parent of a person under 18 years or the resident primary carer or a parent of a person with a disability;
- The sexual orientation ground: Gay, lesbian, bisexual or heterosexual;
- The religion ground: Different religious belief, background, outlook or none;
- The age ground: This applies to all ages above the maximum age at which a person is statutorily obliged to attend school;
- The disability ground: This is broadly defined including people with physical, intellectual, learning, cognitive or emotional disabilities and a range of medical conditions;
- The race ground: A particular race, skin colour, nationality or ethnic origin;
- The Traveller community ground: People who are commonly called Traveller’s, who are identified both by Traveller’s and others as people with a shared history, culture and traditions, identified historically as a nomadic way of life on the island of Ireland

The definition of sexual harassment includes any act of physical intimacy, request for sexual favours, any other act or conduct including spoken words, gestures or the production, display or circulation of written words, pictures or other material that is unwelcome and could reasonably be



regarded as sexually offensive, humiliating or intimidating. Further please take note that interpersonal conflict may still be referred to as unacceptable behaviour in the workplace and it is the responsibility of the employer to attempt to resolve these issues.

A responsible company must ensure that they have an anti – bullying and harassment policy and a policy in relation to Health and Safety issues is in operation within their business which contains the steps that must be taken if there is an incident of bullying and/or harassment in any form. If an employee alleges that any form of bullying and /or harassment has occurred then the employer must take prompt steps to address the issue in a responsible manner. The Labour Court acknowledged in the case of *Saeahan Media Ireland Limited v “a worker”*<sup>1</sup>, that work related stress is a health and safety issue and held that employers have an obligation to deal with instances of its occurrence which may be brought to their attention

### **What Must An Employer Do if they receive a complaint?**

There are a number of steps that an employer can take when a complaint is made to them. Firstly they should ask for the allegations to be given in writing highlighting all instances of bullying so that the alleged offender can be given an opportunity to explain.

If the matter can be rectified on an informal basis a meeting can take place between the complainant, the alleged offender and a member of management. If discussions rectify the matter and both parties agree to take steps forward and move on and the complainant is happy with the outcome of the decision then both parties can return to work.

If parties are not willing to enter into informal discussions or following on from informal discussions they are not happy with that there has been any progress then the matter must move to a formal investigation. A complainant may chose not to avail of the informal procedure and no inference can be drawn if the complainant chooses not to avail of the informal procedure and no consideration should be given to this fact in any formal investigation.

It is best practice to engage the services of an external body such as a mediator or investigator. This step also demonstrates to any external body, including the Labour Relations Commission, The Equality Tribunal and the Courts that the company are taking a serious view to this complaint and that it is being dealt with in a professional manner.

An independent person can view the company without any bias, they are unknown to both parties and the alleged offender and complainant will benefit from the assurances that they are there to given a full and fair opinion in relation to the complaints made.

An independent person will be given the written complaint that the complainant has made and then they will be interviewed. They will then interview the alleged offender and ask them their view on the allegation that has been made and any explanations that can be given. If there are any discrepancies then the parties may be re – interviewed to clarify these. If other parties are mentioned within any of the interviews such as witnesses then these may also be interviewed by

<sup>1</sup> [1999] 10 ELR 41



the independent persons. Following on from these interviews once the independent persons have considered the interviews they then draw up a report outlining the discussions that took place during these interviews and their conclusions in relation to the same. Copies of the report should be given to both the complainant and the alleged offender and their comments on the same will be noted. Recommendations will also be given within the report and these are for the company to consider and implement. If it is found that the alleged offender has in fact bullied or harassed the complainant then they must be disciplined by the company and this can be carried out in accordance with the company grievance procedure.

Under the Unfair Dismissals Acts 1977 as amended, if the complainant can show that by virtue of the acts of the employer (ie) their failure to address a complaint made to them correctly, they were constructively dismissed, then they may be awarded up to 2 years salary. An employee also has the option of seeking assistance from the Labour Relations Commission under the Industrial Relations Acts 1947 – 2004 and the Safety, Health and Welfare at Work Act, 2005.

If a claim is brought to the Equality Tribunal where a complainant alleges that they have been harassed in the workplace, The Employment Equality Act, 1998 permits a defence where an employer can show that it took reasonably practicable steps to prevent an employee's harassment.

### **Conclusion**

Preparation and knowledge are the key ingredients in handling any bullying and/or harassment allegation. A company must show that once the matter has been brought to its attention it has acted in a prompt professional manner by attempting to deal with the matter in an informal manner. If this can not rectify the issue then the company must show that they invoked the formal investigation and if necessary, have instructed professional external people to investigate a very serious allegation. Steps like this can act as defences in any employment claims such as constructive dismissal and personal injury claims for stress suffered as a result of the bullying and or harassment in the workplace.

Actions brought against companies where bullying and harassment allegations have not been correctly dealt with are increasing, and for this reason it is of a paramount importance that a company is aware of the steps to take if any bullying and/or harassment allegation is made to limit the risk and cost involved in answering any claim brought by affected employees.

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