

Leisure report

Nicholas C.J. Lakeland from Silverman Sherliker gives his expert advice

Bullying in the workplace – the employer's responsibilities



Evidence from Destructive Conflict, in the UK's largest ever study of work place bullying, found that one in ten people were bullied at work over the last six months. This equates to approximately two million of the UK's 24 million employees.

Many 'targets' of bullying said they were victimised on a daily or weekly basis.

What is bullying and how can it be recognised in the workplace?

Bullying is regular intimidation that undermines the confidence and capability of the victim.

It 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' (definition from ACAS).

The major problem is recognising the bullying in the workplace, as it is rarely confined to open aggression or obviously hurtful remarks.

Extreme cases of bullying are easily identifiable but it is the grey areas that cause problems. What may be considered as bullying by one person may be considered firm management by another.

Therefore it is good practice for employees to give examples of what is considered unacceptable behaviour in their organisation, these may include:

- Spreading malicious rumours
- Insulting someone (particularly on the grounds of age, race, sex, disability, sexual orientation and religion or belief)
- Exclusion or victimisation
- Ridiculing or demeaning someone – picking on them or setting them up to fail
- Overbearing supervision
- Unwelcome sexual advances
- Making threats or comments about job security without foundation
- Preventing individuals progressing by intentionally blocking promotion or training opportunities

Why should employers be ready to take action?

It is in the employer's interest to encourage a healthy, safe and fair atmosphere for employees to work in as bullying can create severe problems in organisations including:

- Lost productivity (statistics show that each year as many as 18.9 million workdays are lost to bullying)
- Absence (up to half of all stress related illnesses are a direct result of bullying)
- Resignations
- Damage to company reputation
- Tribunal and other court cases (with compensation payments)
- Low morale and poor employee relations

An employer should be aware that he can be held vicariously liable for breach of a statutory duty

What are the legal implications?

Bullying at work is not in itself illegal. However, a bully may be in breach of discrimination and harassment laws or health and safety laws. A bully may firstly risk personal liability for his or her actions.

Moreover, if the mutual trust and confidence between an employee and an employer is broken through bullying at work, then an employee might also have the right to resign and claim 'constructive dismissal' on the grounds of breach of contract. In common law, employers do have a 'duty of care' for all their employees where they are bound to provide a safe working environment, which includes freedom from bullying.

What should employers be doing?

Official guidance from the Health and Safety Executive (HSE) requires employers to:

- Operate an effective anti-bullying procedure or a grievance procedure that includes how to deal with complaints of bullying.
- Treat bullying in the same way as any other hazard at work, e.g. dangerous equipment or working alone. This means using the HSE's five steps to a risk assessment - identifying where bullying is taking place, who is affected and how, take steps to stop it and keep the issue under review.

A formal anti-bullying policy does not have to be over elaborate and could be included in other personnel policies. A specific policy on bullying could include:

- A clear statement of commitment from senior management that bullying and harassment are unlawful, will not be tolerated, may be treated as disciplinary offences 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

- Confidentiality for any complaint
- Reference to grievance procedures (formal and informal), including timescales for action
- Counselling and support availability

Employers should ensure that they investigate the complaint promptly and objectively. Sometimes it may be possible to rectify matters informally. However where an informal resolution is not possible, it may be necessary to deal with the matter formally

at the appropriate level of the organisations disciplinary procedure. If the bullying allegation is sufficiently serious a period of suspension may be required while the matter is investigated.

A Stand Alone Liability for Bullying

The recent case of *Majrowski v Guy's and St Thomas's NHS Trust* has opened up a new and easier route to compensate an employee who has been the victim of work place bullying and has far reaching implications for people who are intimidated or humiliated at work.

In this case Bill Majrowski worked as a clinical audit co-ordinator and he claimed to have been bullied, intimidated and harassed by his departmental manager for about 18 months. He maintained that his manager treated him differently and unfavourably to the other staff, was rude and abusive to him in front of other staff, was excessively critical of his time keeping and work and imposed unrealistic performance targets for him. She was suspended and after an internal investigation, which found that Bill Majrowski had been subjected to homophobic harassment, she was allowed to resign.

Until this case, a victim of bullying had significant hurdles to clear in order to bring a compensation claim against their employers. The main problems were proving that their employers knew or should have known that they were at risk and showing that they had suffered a recognised psychiatric illness.

Bill Majrowski's case has opened up a new, easier way to compensate a victim of workplace bullying. The case was brought under the Protection from Harassment Act 1997. This act was originally introduced to deter stalkers but the act does not define harassment, allowing the courts to extend its ambit way beyond stalkers.

An employer should also be aware that this case has set a precedent that an employer can be held vicariously liable for breach of a statutory duty.

It is now clear that, in general, an employer might be vicariously liable for a breach of statutory duty imposed on his employee, though not on him. The nature of vicarious liability is absolute in the sense that the employer is put into his employee's shoes and, though blameless, the employer might be held liable as long as the harassment is closely connected with the bully's ordinary work duties.

There are however a number of safe guards for the employer. The Act prohibits a course of conduct rather than a one off act of harassment and the victim has to establish objectively that the conduct amounts to harassment and it must be reasonable in the circumstances to impose vicarious liability.

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