



Topics covered: Bullying & harassment in the workplace: how to tackle it as an employer

Bullying & harassment in the workplace: how to tackle it as an employer

It is not uncommon for people to experience unpleasant treatment at work at the hands of their managers and colleagues. It is important that an employer recognises that they owe a duty of care to their employees.

Bullying and harassment are not only unacceptable on moral grounds but may, if unchecked or badly handled, create serious problems for an organisation. Appropriate policies and procedures should be put in place as one might face legal action and financial penalties if proper steps are not taken to prevent bullying and harassment in the workplace.

Below we provide the following information on this issue for employers:

- The Law
- What is bullying?
- What is harassment?
- What are an employer's duties?
- How should employers deal with complaints?

The Law

On September 2014 the Discrimination (Jersey) Law 2013 (the "Law") came into force. With it came the acknowledgment that discriminating against persons on the basis of certain 'protected characteristics' was not legal. The first such protected characteristic was race. In September 2015 the protected characteristics were extended to include gender, sexual orientation, gender reassignment and maternity and pregnancy. The next development in the Law is likely to be the extension of the protected characteristics to cover religion. The maximum penalty for employers and private individuals who are found to have breached the Law is £10,000.

What is bullying?

Bullying and harassment are often terms which are used interchangeably and there is no doubt that they are similar. Whatever form it takes, it is behaviour that is unwarranted and unwelcome to the individual. Bullying covers a wide range of misconduct, including but not limited to:

- offensive, intimidating, malicious, or insulting behaviour;
- abuse of authority which violates the dignity of an individual or a group of people;

- creating a hostile environment against an individual; and
- the undermining, humiliation or injury of an individual.

What is harassment?

Article 28 of the Law covers harassment in respect of the various protected characteristics. Under the Law a person harasses another if that person engages in unwanted conduct towards the subject that is related to a protected characteristic and which has the purpose or effect of violating the subject's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the subject.

Harassment that is not related to a protected characteristic under the Law at any given time should still be dealt with in accordance with an employer's policies and procedures but will not be capable of forming the basis of a claim under the Law.

It should be noted that, unless it relates to protected characteristics, the Law does not specifically prohibit such conduct. It is only possible to bring a claim for 'bullying' to the Jersey Employment & Discrimination Tribunal if the conduct constitutes harassment.

What are an employer's duties?

In addition to an employer's obligations under the Law, there is a further statutory duty under the Health and Safety at Work (Jersey) Law 1989 "to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all employees". Failure to do so could result in civil action being taken against employers in the Royal Court. Employers owe a common law duty of care to their employees. If the trust and confidence between employer and employee is broken e.g. through bullying and harassment at work, an employee could resign and claim 'constructive dismissal' on the grounds of breach of contract. Employers are usually responsible in law for the acts of their workers.

Employers are faced with the sometimes difficult task of assessing whether conduct by an employee amounts to bullying or harassment. Behaviour that is considered bullying by one person may be considered strict 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 considered to be unacceptable behaviour in their organisation.

As an employer you are responsible for creating and maintaining a safe workplace that is free from bullying,

intimidation and harassment. To do so is in everyone's interests. Employees are protected by a combination of employers' policies, customary law and legislation. An employer's first responsibility is to put in place a robust and well communicated policy that clearly articulates the organisation's commitment to promoting dignity and respect at work. This need not be overly complicated but should include, as a minimum:

- A statement of commitment from senior management to prevent bullying and harassment.
- An acknowledgement that bullying and harassment are problems for any organisation.
- A clear statement that bullying and harassment are unlawful, will not be tolerated, could lead to disciplinary action or even dismissal and, in certain cases, could lead to a financial penalty for the individual.
- Examples of unacceptable behaviour.
- Guarantee of confidentiality for any employee who alleges that they are being bullied or harassed.
- Reference to grievance, investigatory and disciplinary procedures and timescales for any action.

It is important to ensure that staff are aware of the firm's policy on bullying and harassment and that they know who to turn to if they have a grievance. Those members of staff to whom people are directed should receive the appropriate training in handling complaints and ensuring that appropriate action is taken when required.

How should employers deal with complaints of bullying and/or harassment?

Any policy or procedure is only as good as its implementation. Ensure that any complaints raised are taken seriously. Employees do not usually make serious allegations unless they feel they have a valid grievance. The complaint should be dealt with sensitively and expeditiously and the complainant should feel assured that the complaint is being handled confidentially.

In some cases, the matter can be handled informally. It may be a simple case of a misunderstanding between employees, where one has not appreciated that certain behaviour is offensive or upsetting to another. At the other end of the spectrum is the malicious bully, whose behaviour is calculated and deliberately offensive. In the latter case, the appropriate action might be dismissal and an informal approach might not be appropriate.

If the matter cannot be resolved informally, employers may have no option but to follow the formal procedure as set out in the firm's policies and procedures. Whilst every firm's policy will be written differently, employers must ensure that all investigations into alleged bullying and/or harassment are seen to be handled objectively and independently. In all cases, proper records should be kept as it may be a defence to a later claim to show that appropriate action was taken.

The following is suggested as a minimum framework upon which to build a suitable procedure:

- Upon receipt of a formal complaint (employers should have a template complaint record available for employees) the employer should acknowledge the complaint and notify the complainant in writing that the complaint has been received. A meeting should be proposed giving the complainant suitable notice. Where possible, a member of Human Resources should attend that meeting and the complainant should be advised as to his/her right to be accompanied by a union representative (of appropriate) or a work colleague.
- If appropriate, employers should consider precautionary action. This could involve either temporary redeployment or exclusion of the alleged perpetrator. Care should be taken when considering this approach; advice should be sought and precautionary action will be without any assumption of culpability. Any redeployment or exclusions should be for as short a period as possible and the need for its continuation must be regularly reviewed.
- Any investigation must be carried out in accordance with the firm's policies and procedures. The must be seen to be impartial and independent and should be carried out in a timely manner to ensure a swift conclusion. Both the complainant and the alleged perpetrator should be kept informed as to the progress of the investigation.
- Ensure that the alleged perpetrator is informed of the allegation against him/her and is aware of the potential consequences of the investigation.
- Hold a meeting with the complainant and the alleged perpetrator. It may be helpful to take written statements from both. Both parties may be accompanied by a union representative or a colleague.
- Once the investigation is complete, management within the firm should review the investigation and agree an appropriate course of action.
- The complainant should be invited to a meeting to be apprised as to the outcome of the investigation and the next steps. Where appropriate the complainant should be advised as to a right of appeal should they feel their complaints have not been fully addressed.
- If the investigation reveals no case to answer, provide support for both parties and give consideration to managing their ongoing working relationship.
- In cases where harassment/bullying are substantiated but disciplinary action is not warranted, employers should consider implementing supervisory processes such as advice, counselling, training and/or support. In such cases it should be made absolutely clear to the perpetrator that their behaviour is unacceptable and further similar instances may lead to disciplinary action.
- Where an investigation indicates that there is evidence of unacceptable conduct, and an acceptable resolution cannot be reached or supervisory processes are inappropriate, it may be necessary to commence disciplinary proceedings in accordance with the relevant disciplinary procedure.

For expert legal advice on employment law or any of our legal services, please contact us

 Viberts House, Don Street, St. Helier, Jersey JE4 8ZQ
 +44 (0) 1534 888666  employment@viberts.com

 www.viberts.com

