



Topics covered: Bullying & harassment in the workplace: how to handle it as an employee

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It is not uncommon for people to experience unpleasant treatment at work at the hands of their managers and colleagues. The problem faced by employees is knowing whether this treatment amounts to bullying or harassment and, even if it does, what they can do about it.

Bullying and harassment are not only unacceptable on moral grounds but may, if unchecked or badly handled, create serious distress for the victim. Organisations should have appropriate policies and procedures in place to protect employees from bullying and harassment in the workplace.

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

- The Law
- What is bullying?
- What is harassment?
- Your employer's duties
- What you can do if you feel you are being harassed
- What is the complaint process?

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.

Be mindful that 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.

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.

Your employer's duties

Your employer is responsible for creating and maintaining a safe workplace that is free from bullying, intimidation and harassment. As an employee, you are protected by a combination of employers' policies, customary law and legislation.

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". Your employer owes you a common law duty of care as an employee. If the trust and confidence between you and your employer is broken e.g. through bullying and

harassment at work, you could resign and claim 'constructive dismissal' on the grounds of breach of contract.*

What can you do if you feel you are being bullied or harassed?

- Your employer should have provided you with, or you should at least have access to, your firm's policies and procedures manual. You should familiarise yourself with the section on bullying and harassment and, if you do decide to take formal action, you should do so in accordance with policy.
- Discuss the matter with your manager, supervisor, union rep or even a colleague in whom you can confide.
- Keep a written record or diary of all bullying incidents, including past incidents – no matter how small they appear. Bullying and harassment is often revealed through patterns of behaviour and frequency of incidents. A one-off incident might not be sufficient to constitute a breach under the Law. Keeping a written record, as well as any offensive emails or documents will increase your chances of successfully bringing a claim.
- If you feel confident and able to do so, you should raise your concerns with the person whose conduct you are concerned about. It may be the case of a simple misunderstanding. If you do not feel able to speak directly with the individual, then consider asking someone else, in whom you feel able to confide, to speak with them on your behalf or, alternatively, put your concerns in writing.
- Remember, bullying and harassment are not appropriate and should not be tolerated. If you are the victim of such behaviour then you should seek advice as to whether you have a valid grievance in law. You may be able to bring a claim to the Jersey Employment & Discrimination Tribunal or even take civil action for breach of contract or constructive dismissal. You are advised to seek advice before doing so.
- Speak to JACS who offer free impartial advice on employment issues (www.jacs.gov.je)

What is the complaint process?

If you feel you have a valid grievance and decide to make an allegation of bullying or harassment, your employer is duty bound to take it seriously. Your complaint should be dealt with sensitively, expeditiously and confidentially.

In some instances, 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. Whatever the circumstances, your employer must ensure that any investigations into alleged bullying and/or harassment are handled objectively and independently. Always keep your own records of the conversations and meetings held.

*To claim unfair dismissal an employee must have been employed by the employer they are claiming against for more than one year.

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