



EDUCATION SECTOR ALERT

Bullying and Harassment of Staff

Recent research carried out by the Times Higher, and Equality Challenge Unit has found that a significant number of staff, including administrative, professors, research staff and lecturers working in further and higher education institutions have experienced some form of bullying and harassment.

Until recently, legislation under which cases of discrimination, bullying and harassment are brought made no specific reference to harassment or bullying. However, changes have been made to relevant legislation to provide definitions of harassment, where such behaviour also amounts to discrimination. There has always been a duty on employers to prevent unlawful discrimination, and to protect their employee's physical and mental health, but these changes place an ever-increasing emphasis for all employers to be aware of legislative changes, and adapt appropriate policies and procedures to ensure that such behaviour is stamped out.

Legislative Changes

1. Sex Discrimination Act 1975

Amended by the Employment Equality (Sex Discrimination) Regulations 2005, the Sex Discrimination Act 1975 now contains a definition of "harassment", while distinguishing between harassment on the grounds of sex and sexual harassment.

Harassment on the grounds of sex occurs when a woman is subject to unwanted conduct due to her sex. Sexual harassment occurs where a woman is the subject of unwanted verbal, non-verbal or physical conduct of a sexual nature. In both cases, the unwanted action must have the purpose or effect of violating her dignity, and creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

Further, a woman can be subjected to harassment if she is treated less favourably because of her rejection or notably her submission to unwanted conduct as mentioned above, than she would have been treated otherwise. This will make the argument that there was no harassment because she consented to it more difficult if she can argue that she felt pressurised to not reject any such advances.

Similar provisions apply where an individual has undergone gender reassignment.

2. Race Relation Act 1976

A definition of "harassment" is found in section 3A of Race Relations Act 1976.

Where a person engages in unwanted conduct towards another person on the grounds of race, ethnic or national origins, this will amount to harassment where such unwanted conduct has the purpose or effect of violating that other person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

3. Disability Discrimination Act 1995

The Disability Discrimination Act 1995 (Amendment) Regulations 2003 amended the 1995 Act by adding to it, a definition of "harassment".

Similar to those provisions contained in Sex Discrimination Act 1975 and Race Relations Act 1976, a disabled person will be subject to harassment where a person engages in unwanted conduct because of the disabled person's disability, which has the purpose or effect of violating their dignity, creates an intimidating, hostile, degrading, humiliating or offensive environment for them.

The Draft Disability Discrimination Act 1995 (Amendment) (Further and Higher Education) Regulations, are currently out for consultation. These Regulations, if passed, will introduce a meaning of harassment into the Education provisions of the Disability Discrimination Act 1995 which mirror the employment provisions.

4. Health & Safety

Health and Safety legislation is also applicable where bullying and harassment are concerned.

This legislation places a duty on employers to protect an employee's physical and mental health, and to consult safety representatives on matters which arise in this regard. Further, the employer is bound to undertake various risk assessments and the vigourousness of the risk assessment process is such that it must be "sufficient and sustainable".

5. Employment Law

In the employment context an employee has the right not to be subjected to bullying and harassment and a failure to investigate and deal with such allegations may constitute a breach of contract entitling an employee to resign and claim constructive dismissal.

What must be done now?

It is important that all Further and Higher Education establishments have rigorous procedures and policies in place with which to tackle bullying and harassment for its staff and students. Specific recommendations are:

- Tackle the problem at source taking all possible steps to minimise any potential acts of bullying and harassment before they occur.

- Analyse the workplace, by way of risk assessment to identify areas where bullying or harassment may occur. Such risk assessment should be continuous.
- Put in place policies and procedures to tackle the problems of bullying and harassment, with particular focus on grievance procedures for the affected. There should be specific policies on bullying and harassment and equal opportunities.
- At a general level, conduct individual or collective meetings with employees to make it clear that bullying and harassment will not be tolerated in the work place.
- Ensure that appropriate support is available for both the alleged victim and the alleged perpetrator.
- Build in training on bullying and harassment and discrimination into any induction procedures.

Want to know more?

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