



Bullying and Harassment at Work

Note: This publication is intended to provide general guidance only. It does not constitute legal advice and should not be relied upon as doing so.

Advisory Officers, at the Employment Relations Service, can offer confidential and free advice on all aspects of employment law and employment relations.

Overview

Introduction

Everyone should be treated with dignity and respect at work. Bullying and harassment should not be tolerated. It is the employer's responsibility to ensure that this does not happen in the workplace.

What is Bullying and Harassment?

There are many definitions of bullying and harassment. These terms are used interchangeably and many definitions include bullying as a form of harassment.

Bullying is often described as the process whereby an employee is intimidated, mistreated or humiliated. It can be characterised by offensive, malicious or insulting behaviour which is designed to undermine the confidence and capability of the recipient.

Harassment is unwanted behaviour which affects the dignity of men and women in the workplace. It may be persistent or an isolated incident. The key is that the actions or comments are seen as demeaning or humiliating and are unacceptable to the recipient.

Examples of bullying/harassing behaviour include:

- ridiculing or demeaning someone
- exclusion or victimisation
- unfair treatment
- spreading malicious rumours or insulting someone
- inappropriate intrusive questioning, particularly into personal and domestic life

- overbearing supervision
- deliberately undermining a competent employee by overloading and constant criticism
- unwelcome sexual advance – touching, standing too close, inappropriate language or behaviour, display of offensive material
- preventing employees progressing by intentionally blocking promotion or training opportunities

Bullying and harassment is not necessarily face to face, it may also occur in emails, visual images (for example pictures of a sexual nature), through written communications or over the phone. It can be hard to recognise as it may not be obvious.

Bullying and harassment makes the victim anxious and humiliated. He/she may suffer stress, loss of confidence and self-esteem leading to illness, absence from work and even resignation.

The costs to the business may include low morale, inefficiency, long term illness, potential recruitment and retraining costs due to the loss of staff. Job performance is almost always affected and employee relations in the workplace suffer.

Legal position

Employers have a duty of care for their employees. If the mutual trust and confidence between employer and employee is broken through bullying and harassment at work an employee could resign and claim constructive dismissal, under The Employment Protection (Guernsey) Law, 1998, subject to a qualifying period of one year's employment.

If the bullying and harassment is related to a person's sex/gender, for instance sexual harassment, an employee could make a complaint of sex discrimination under the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, against the employer and also against the individual harasser/s.

If the mutual trust and confidence between employer and employee is broken, as outlined above, the employee could also resign and claim constructive dismissal. There is no qualifying period for an employee making a claim in these circumstances.

Reference should also be made to offences and remedies contained within The Protection from Harassment (Bailiwick of Guernsey) Law, 2005; a copy of which is available from the website www.guernseylegalresources.gg

Finally, an employer who tolerates bullying and harassment runs the risk of an employee claiming damages in the civil courts for any stress related illnesses that may have resulted from being subjected to such treatment at work.

What can employees do?

If you feel you are being bullied or harassed you should decide on a course of action as soon as possible. There are a number of options to consider:

- talk to colleagues to find out if anyone else is suffering similar treatment or may have witnessed what has happened to you
- talk to someone you feel comfortable with to discuss the problem. This could be your manager, someone in HR or your Trade Union representative
- keep a diary of all the incidents and record dates, times, witnesses and your feelings
- keep copies of anything that is relevant, for instance letters, memos, notes of meetings or emails
- tell the person to stop whatever it is they are doing that is causing you distress as they might not realise what effect their behaviour or actions is having on you. If you find this difficult you could ask someone else to act on your behalf
- if you feel unable to confront the bully/harasser consider writing to them making it clear that you object to this behaviour, keep a copy of this and any reply
- if you decide to make a formal complaint, follow your employer's procedure or, if there is no established procedure, refer to the Employment Guide 'Raising and Handling Grievances'

What should employers do?

Employees do not always feel able or confident enough to complain, particularly if the harasser is a manager or senior employee in the business. It is, therefore, important for employers to ensure that employees are aware of the options open to them for dealing with bullying and harassment. This can be achieved by introducing a formal policy. This does not need to be complex, especially for small firms, but could include the following:

- a clear statement from senior management that bullying and harassment will not be tolerated
- examples of unacceptable behaviour
- a statement that bullying and harassment may be treated as disciplinary offences
- guidance on how to make a complaint and who it should be made to
- a statement that complaints will be dealt with promptly, sensitively and confidentially

- reference to grievance procedures (formal and informal), including timescales for action
- an explanation of the investigation process, outlining timescales
- an assurance that the employee making the complaint will not be moved from their normal place of work, unless they request this
- be clear that unfounded allegations made maliciously will be investigated and dealt with in accordance with disciplinary procedures

Employers should provide appropriate training for managers, not only regarding the policy and the process, but also how to deal with the victim and the bully/harasser.

Training should cover sexual harassment and should recognise the potential for employees to be personally liable for sexual harassment and discriminatory acts and to be named in discrimination Tribunal proceedings.

Please refer to the Employment Guide 'Sex Discrimination at Work – Your Responsibilities' and 'Sex Discrimination at Work – Your Rights' for further information.

How should an employer respond to a complaint of bullying/harassment?

Take the complaint seriously. An employee would not normally make an accusation unless they feel seriously aggrieved.

Investigate the complaint promptly and objectively. All the circumstances should be considered, in particular, the impact of the alleged behaviour and the perception of the complainant. Harassment/bullying may be perceived differently by different people. Behaviour which is considered bullying by one person may be considered firm management by another.

It is important for employers to gather and review all the evidence and ask themselves whether what has taken place could reasonably cause offence.

In some cases it may be possible to deal with the issue informally. Sometimes people are unaware of the effect that their behaviour is having. An informal discussion with an agreement that the behaviour will cease may resolve matters.

Disciplinary Procedures

Where an informal resolution is not possible, the employer may decide that the matter is a disciplinary issue which needs to be dealt with in accordance with the organisation's disciplinary policy. As in any disciplinary issue, it is important to follow a fair procedure. The Code of Practice on 'Disciplinary Practice and Procedures in Employment' provides guidance on good practice when handling disciplinary matters.

Any action taken must be reasonable in the light of the facts. In some cases it may be concluded that a penalty is unnecessary or that counselling or training would be more appropriate.

Where a formal process is used and a fair and objective investigation has shown justifiable cause for the complaint, any resulting disciplinary action should be carefully documented and the situation monitored. Oral or written warnings or the transfer of the bully/harasser, are examples of disciplinary penalties that might be imposed in a proven case. Where bullying or harassment amounts to gross misconduct, dismissal without notice may be appropriate.

Mediation and Counselling

Employees may find counselling or mediation helpful and employers may wish to utilise the services of external companies and organisations who offer this service. Larger organisations may wish to consider training their own in house counsellor or mediator.

Counselling can play an important role in complaints about bullying and harassment by providing a confidential and informal approach. It can be useful where the investigation casts doubt on the validity of the complaint.

Mediation can also be a good way of dealing with bullying, discrimination or harassment situations. It is a voluntary process where a neutral person works with people who have a disagreement to help them to find their own solution and reach an agreement to resolve and/or improve the situation.

Other Publications

Publications can be downloaded from the website on a wide range of employment relations subjects, including local employment legislation and best practice guidance on other employment related matters.

Contact Information

For further advice

- Check www.gov.gg/employmentrelations
- Email employmentrelations@gov.gg
- Contact the **Employment Relations Service**, Edward T Wheadon House, Le Truchot, St Peter Port, GY1 3WH
- Telephone number: **01481 220026**