A guide for managers and employers

Bullying and harassment at work

inform advise train work with you

We inform, *advise, train and work with you*

Every year Acas helps employers and employees from thousands of workplaces. That means we keep right up-to-date with today's employment relations issues – such as discipline and grievance handling, preventing discrimination and communicating effectively in workplaces. Make the most of our practical experience for your organisation – find out what we can do for you.

We inform

We answer your questions, give you the facts you need and talk through your options. You can then make informed decisions. Contact us to keep on top of what employment rights legislation means in practice – before it gets on top of you. Call our helpline 0300 123 1100 for free confidential advice (open 8am-6pm, Monday to Friday) or visit our website www.acas.org.uk.

We advise and guide

We give you practical know-how on setting up and keeping good relations in your organisation. Download one of our helpful publications from our website or call our Customer Services Team on 0300 123 1150 and ask to be put you in touch with your local Acas adviser.

We train

From a two-hour session on the key points of new legislation or employing people to courses specially designed for people in your organisation, we offer training to suit you. Go to www.acas.org.uk/training to find out more.

We work with you

We offer hands-on practical help and support to tackle issues in your business with you. This might be through one of our well-known problem-solving services. Or a programme we have worked out together to put your business firmly on track for effective employment relations. You will meet your Acas adviser and discuss exactly what is needed before giving any go-ahead. Go to www.acas.org.uk/businesssolutions for more details.

Why not keep up-to-date with Acas news and notifications by signing up for our popular e-newsletter. Visit www.acas.org.uk/subscribe

Everyone should be treated with dignity and respect at work.

Bullying and harassment of any kind are in no-one's interest and should not be tolerated in the workplace. This leaflet is designed to offer practical advice to employers to help them prevent bullying and harassment and to deal with any cases that occur. It includes guidelines for the development of policies and procedures.

What is bullying and harassment?

Examples and definitions of what may be considered bullying and harassment are provided below for guidance. For practical purposes those making a complaint usually define what they mean by bullying or harassment – something has happened to them that is unwelcome, unwarranted and causes a detrimental effect. If employees[1] complain they are being bullied or harassed, then they have a grievance which must be dealt with regardless of whether or not their complaint accords with a standard definition.

Is sexual harassment different?

Harassment of a sexual nature is one of the most common forms of harassment and is specifically outlawed by the Equality Act 2010 as is harassment related to relevant protected characteristics. It is in the interest of your organisation for you to take steps to make clear what sort of behaviour would be considered sexual harassment.

How can bullying and harassment be recognised?

There are many definitions of bullying and harassment. Bullying may be characterised as:

> Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient.

1 The term 'employees' is used to cover all those who work for someone else rather than on their own account, regardless of whether they are employed strictly under a contract of employment.

Harassment as defined in the Equality Act 2010 is

> Unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Behaviour that is considered bullying by one person may be considered firm 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 unacceptable behaviour in their organisation and this may include:

- spreading malicious rumours, or insulting someone by word or behaviour
- copying memos that are critical about someone to others who do not need to know
- ridiculing or demeaning someone – picking on them or setting them up to fail
- exclusion or victimisation
- unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances – touching, standing too close, display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected
- making threats or comments about job security without foundation
- deliberately undermining a competent worker by overloading and constant criticism
- preventing individuals progressing by intentionally blocking promotion or training opportunities.

Bullying and harassment is not necessarily face to face, it may occur through written communications, visual images (for example pictures of a sexual nature or embarrassing photographs of colleagues), email, phone, and automatic supervision methods – such as computer recording of downtime from work, or recording of telephone conversations – if these are not universally applied to all workers.

Bullying and harassment can often be hard to recognise – symptoms may not be obvious to others, and may be insidious. Those on the receiving end may think 'perhaps this is normal behaviour in this organisation'. They may be anxious that others will consider them weak, or not up to the job, if they find the actions of others intimidating.

They may be accused of 'overreacting', and worry that they won't be believed if they do report incidents. People being bullied or harassed may sometimes appear to overreact to something that seems relatively trivial but which may be the 'last straw' following a series of incidents. There is often fear of retribution if they do make a complaint. Colleagues may be reluctant to come forward as witnesses, as they too may fear the consequences for themselves. They may be so relieved not to be the subject of the bully themselves that they collude with the bully as a way of avoiding attention.

Why do employers need to take action on bullying and harassment?

Bullying and harassment are not only unacceptable on moral grounds but may, if unchecked or badly handled, create serious problems for an organisation including:

- poor morale and poor employee relations
- loss of respect for managers and supervisors
- poor performance
- lost productivity
- absence
- resignations
- damage to company reputation
- tribunal and other court cases and payment of unlimited compensation. Refer to Appendix 1 which outlines important changes to making Employment tribunal claims.

It is in every employer's interests to promote a safe, healthy and fair environment in which people can work.

Summary of the law

Harassment

The Equality Act 2010 uses a single definition of harassment to cover the relevant protected characteristics. Employees can complain of behaviour that they find offensive even if it is not directed at them.

Harassment is “unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual”.

The relevant protected characteristics are age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation.

> Example:
>
> Paul is disabled and is claiming harassment against his line manager after she frequently teased and humiliated him about his disability. Richard shares an office with Paul and he too is claiming harassment, even though he is not disabled, as the manager’s behaviour has also created an offensive environment for him.

In addition, the complainant need not possess the relevant characteristic themselves and can be because of their association with a person who has a protected characteristic, or because they are wrongly perceived to have one, or are treated as if they do. Harassment applies to all protected characteristics except for pregnancy and maternity where any unfavourable treatment may be considered discrimination, and marriage and civil partnership where there is no significant evidence that it is needed.

Example:

Steve is continually being called gay and other related names by a group of employees at his work. Derogatory homophobic comments have been posted on the staff noticeboard about him by people from this group. Steve was recently physically pushed to the floor by one member of the group but is too scared to take action. Steve is not gay but heterosexual; furthermore the group know he isn't gay. This is harassment related to sexual orientation.

Harassment at work by others

An employee can make a complaint against their employer where they are harassed by someone who doesn't work for that employer such as a customer, client or passenger. As an employer, once you are aware of this unwanted behaviour you should take reasonable and proportionate action to address the issues.

Example:

Chris manages a Council Benefits Office. One of his staff, Raj, is a Sikh. Raj mentions to Chris that he is feeling unhappy after a claimant made derogatory remarks regarding his faith in his hearing. Chris is concerned and monitors the situation. Within a few days the claimant makes further offensive remarks. Chris reacts by having a word with the claimant, pointing out that this behaviour is unacceptable. He considers following it up with a letter to him pointing out that he will ban him if this happens again. Chris keeps Raj in the picture with the actions he is taking and believes he is taking reasonable steps to protect Raj from harassment.

Bullying

Acas characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient.

The impact on the individual can be the same as harassment and the words bullying and harassment are often used interchangeably in the workplace.

Unless bullying amounts to conduct defined as harassment in the Equality Act 2010 it is not possible to make a complaint to an Employment Tribunal about it.

Unfair dismissal

Employers have a 'duty of care' for all their employees. If the mutual trust and confidence between employer and employee is broken – for example, through bullying and harassment at work – then an employee can resign and claim 'constructive dismissal', at an Employment Tribunal on the grounds of breach of contract. Employers are usually responsible in law for the acts of their workers. If you are (or expect to be) affected by such an issue, see Appendix 1 on important changes to making a tribunal claim.

Health and safety

Breach of contract may also include the failure to protect an employee's health and safety at work. Under the Health and Safety at Work Act 1974 employers are responsible for the health, safety and welfare at work of all employees.

For more information visit **www.hse.gov.uk**.

What should employers do about bullying and harassment?

First, consider framing a workplace policy. This need not be over-elaborate, especially for small firms, and might be included in other personnel policies, but a checklist for a specific policy on bullying and harassment could include the following:

- statement of commitment from senior management
- acknowledgement that bullying and harassment are problems for the organisation
- clear statement that bullying and harassment is unlawful, will not be tolerated and that decisions should not be taken on the basis or whether someone submitted to or rejected a particular instance of harassment
- examples of unacceptable behaviour
- statement that bullying and harassment may be treated as disciplinary offences
- the steps the organisation takes to prevent bullying and harassment

- responsibilities of supervisors and managers
- confidentiality for any complainant
- reference to grievance procedures (formal and informal), including timescales for action
- investigation procedures, including timescales for action
- reference to disciplinary procedures, including timescales for action counselling and support availability (see page 9 for further information on counselling)
- training for managers
- protection from victimisation
- how the policy is to be implemented, reviewed and monitored.

The statement of policy will gain additional authority if staff are involved in its development. It should be made clear that the policy applies to staff on and off the premises, including those working away from base. The policy should also make plain that bullying or harassment of staff by visitors to the organisation will not be tolerated.

First, all organisations, large and small, should have policies and procedures for dealing with grievance and disciplinary matters. Staff should know to whom they can turn if they have a work-related problem, and managers should be trained in all aspects of the organisation's policies in this sensitive area.

Second, set a good example. The behaviour of employers and senior managers is as important as any formal policy. Strong management can unfortunately sometimes tip over into bullying behaviour. A culture where employees are consulted and problems discussed is less likely to encourage bullying and harassment than one where there is an authoritarian management style. The organisation must make it clear that bullying and harassment are unacceptable.

Third, maintain fair procedures for dealing promptly with complaints from employees. Complaints of bullying and harassment can usually be dealt with using clear grievance and disciplinary procedures.

Such procedures should have provision for confidentiality, and for both the person making the complaint and the subject of the complaint to be

accompanied by a fellow employee or trade union representative of their choice (the right to be accompanied at grievance hearings is set out in the Employment Relations Act 1999).

Fourth, set standards of behaviour – an organisational statement to all staff about the standards of behaviour expected can make it easier for all individuals to be fully aware of their responsibilities to others.

This may include information about what constitutes bullying and harassment and what work relationships are acceptable and unacceptable. Many organisations find it helpful to supplement basic information with guidance booklets and training sessions or seminars. Training can also increase everyone's awareness of the damage bullying and harassment does both to the organisation and to the individual. Your staff handbook is also a good way of communicating with employees, and can include specific mention of the organisation's views on bullying and harassment and their consequences.

Fifth, let employees know that complaints of bullying and/or harassment, or information from staff relating to such complaints, will be dealt with fairly and confidentially and sensitively. Employees will be reluctant to come forward if they feel they may be treated unsympathetically or are likely to be confronted aggressively by the person whose behaviour they are complaining about.

How should employers respond to a complaint of bullying and/or harassment?

Investigate the complaint promptly and objectively. Take the complaint seriously. Employees do not normally make serious accusations unless they feel seriously aggrieved. The investigation must be seen to be objective and independent. Decisions can then be made as to what action needs to be taken.

Employers investigating claims of harassment should consider all the circumstances before reaching a conclusion, and particularly the perception of the complainant as harassment is often felt differently by different people. Having gathered all the evidence employers should ask themselves "could what has taken place be reasonably considered to have caused offence?"

Informal approaches

In some cases it may be possible to rectify matters informally. Sometimes people are not aware that their behaviour is unwelcome and an informal discussion can lead to greater understanding and an agreement that the behaviour will cease. It may be that the individual will choose to do this themselves, or they may need support from personnel, a manager, an employee representative, or a counsellor.

Counselling

In both large and small organisations, counselling can play a vital role in complaints about bullying and harassment, by providing a confidential avenue for an informal approach, and perhaps the opportunity to resolve the complaint without need for any further or formal action.

Some organisations are able to train staff from within, others may contract with a specialist counselling service. Employee assistance programmes are counselling services provided and paid for by the employer and free to the employee. The contact number for the Employee Assistance Professionals Association is given on page 13.

Business organisations may also be able to help in providing advice on accessing good counselling services.

Counselling can be particularly useful where investigation shows no cause for disciplinary action, or where doubt is cast on the validity of the complaint. Counselling may resolve the issue or help support the person accused as well as the complainant.

Mediation

An independent third person or mediator can sometimes help resolve disciplinary or grievance issues. Mediation is a voluntary process where the mediator helps two (or more) people in dispute to find a solution to the issue that they can both agree to.

The mediator does not take sides or tell those in dispute what to do. Mediation is most likely to be successful if both parties:

- understand what mediation involves

- enter into the process voluntarily
- are seeking to repair the working relationship.

Mediation can be a good way of dealing with bullying, discrimination or harassment situations depending upon the nature of any allegations.

Discrimination or bullying actions can range from unintentional misunderstandings and lack of awareness through to deliberate and malicious acts. In some cases the individual and/or the organisation may view the allegations to be of such a nature that investigation and possible disciplinary action is the only alternative.

Mediators may be employees trained to act as internal mediators in their own workplace in addition to their day jobs. Or they may be from an external mediation provider. For more information about mediation see the Acas website at www.acas.org.uk and the Acas/CIPD guide *Mediation: An employer's guide* which can be downloaded from the Acas website.

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 formally at the appropriate level of the organisation's disciplinary procedure. As with any disciplinary problem, it is important to follow a fair procedure. In the case of a complaint of bullying or harassment there must be fairness to both the complainant and the person accused.

Detailed guidance on how to handle disciplinary matters is available in *Discipline and grievances at work – the Acas guide.* The *Acas Code of Practice on disciplinary and grievance procedures* sets out principles for handling disciplinary and grievance situations in the workplace. These include:

- informing the employee of the problem
- holding a meeting to discuss the problem
- allowing the employee to be accompanied
- deciding on appropriate action
- providing the employee with an opportunity to appeal.

Employment tribunals are legally required to take the Code into account when considering relevant cases[1]. Tribunals will also be able to adjust any compensatory awards made in these cases by up to 25% for unreasonable failure to comply with any provision of the Code.

In cases which appear to involve serious misconduct, and there is reason to separate the parties, a short period of suspension of the alleged bully/harasser may need to be considered while the case is being investigated. This should be with pay unless the contract of employment provides for suspension without pay in such circumstances. A suspension without pay, or any long suspension with pay, should be exceptional as these in themselves may amount to disciplinary penalties.

Do not transfer the person making the complaint unless they ask for such a move. There may be cases where somebody makes an unfounded allegation of bullying and/or harassment for malicious reasons. These cases should also be investigated and dealt with fairly and objectively under the disciplinary procedure.

What should be considered before imposing a penalty?

The action to be 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 is preferable – the individual may now be more able to accept the need to change their behaviour. Where a penalty is to be imposed, all the circumstances should be considered, including: the employee's disciplinary and general record; whether the procedure points to the likely penalty; action taken in previous cases; any explanations and circumstances to be considered and whether the penalty is reasonable.

Written warnings, suspension or transfer of the bully/harasser are examples of disciplinary penalties that might be imposed in a proven case. Suspension or transfer (unless provided for in the employee's contract or agreed by the employee), could breach the employee's contract if they suffer a detriment by it, for instance a transfer to a different location which means additional expense or a less responsible job.

1 Refer to Appendix 1 which outlines important changes to making Employment tribunal claims.

Any such breach could lead to a claim of constructive dismissal by the affected employee. Where bullying or harassment amounts to gross misconduct, dismissal without notice may be appropriate.

If you are (or expect to be) affected by such an issue, see Appendix 1 on important changes to making a tribunal claim.

Whenever a case of bullying or harassment arises, employers should take the opportunity to examine policies, procedures and working methods to see if they can be improved – the advice given earlier in this leaflet may be helpful.

Useful contacts

Equality and Human Rights Commission
Go to www.equalityhumanrights.com for further information.

Employee Assistance Professional Association (EAPA)
Information on Employee Assistance Programmes
Tel 0800 783 7616
or go to www.eapa.org.uk for further information.

Acas Helpline
For confidential and impartial advice on employment related issues.
Tel 0300 123 1100
(Open Monday – Friday 8am – 8pm & Saturday 9am – 1pm).

Acas Equality Services
Advice on diversity in employment
Tel 0300 123 1100.

Appendix 1
Important changes to making Employment Tribunal claims

Previously, an employee could go straight to the tribunal service, but this will change. From 6 April 2014, if an employee is considering making an Employment Tribunal claim against their employer, they should notify Acas that they intend to submit a claim.

Details of how and where to do this are given below.

Acas will, in most circumstances, offer to assist in settling differences between employee and employer. Employers intending to make a counter-claim against an employee must follow a similar procedure.

The process for agreeing settlement is called Early Conciliation. It is handled by experienced Acas conciliators and support officers and is:

- free of charge
- impartial and non-judgmental
- confidential
- independent of the Employment Tribunal service
- offered in addition to existing conciliation services.

Early Conciliation focuses on resolving matters on terms that employee and employer agree.

Early Conciliation may not resolve matters in every claim. When this is the case Acas will issue a certificate that is now required for a claim to be submitted to an Employment Tribunal.

From July 2013, employees have been required to pay a fee to “lodge” a claim at the Employment Tribunal, followed by another fee if the claim progresses to a tribunal hearing. In some cases, other fees may also apply. If a claim is successful, the employee may apply for the costs of the fees to be covered by the employer. Some employees, including those on low incomes, may be exempt from fees.

Remember, when a claim is lodged with a tribunal, Acas will continue to offer conciliation to both sides until the tribunal makes a judgment and, if the claim is successful, a remedy decision (usually financial compensation) has been made.

To find out more about Early Conciliation, go to
www.acas.org.uk/earlyconciliation

To find out more about Employment Tribunal fees, go to
www.justice.gov.uk/tribunals/employment

Acas Training

Our training is carried out by experienced Acas staff who work with businesses every day. They will show you the value to your business of following best practice in employment matters and how to avoid the common pitfalls. We also run special training sessions on new legislation.

Look at the Acas website for up-to-date information about all our training or if you want to book a place online, just go to **www.acas.org.uk/training** or call the Acas customer services team on 0300 123 1150.

Training sessions are specially designed for smaller companies and our current programme includes:

- Managing discipline and grievances at work
- Managing absence at work
- Employment law update
- HR management for beginners
- Having difficult conversations
- Contracts of employment: how to get it right
- New employment legislation
- Redundancy and restructuring.

We also have free online learning to help you – just go to **www.acas.org.uk** and click on e-learning to look at the topics covered.

Information in this booklet has been revised up to the date of the last reprint – see date below. For more up-to-date information go to the Acas website www.acas.org.uk.

Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

Acas aims to improve organisations and working life through better employment relations. We provide up-to-date information, independent advice, high quality training and we work with employers and employees to solve problems and improve performance.

We are an independent, publicly-funded organisation and many of our services are free.

June 2014

Acas' offices:

- **National**
  London
- **East Midlands**
  Nottingham
- **East of England**
  Bury St Edmunds, Suffolk
- **London**
- **North East**
  Newcastle upon Tyne
- **North West**
  Manchester
- **North West**
  Liverpool
- **South East**
  Fleet, Hampshire
- **South West**
  Bristol
- **West Midlands**
  Birmingham
- **Yorkshire and Humber**
  Leeds
- **Scotland**
  Glasgow
- **Wales**
  Cardiff

Helpline 0300 123 1100

0300 123 1100
Acas Helpline Text Relay

To view a full list of Acas publications go to **www.acas.org.uk/publications**

0300 123 1150
Acas Customer Services Team who can provide details of services and training in your area or visit **www.acas.org.uk/training**

0300 123 1100
for questions on managing equality in the workplace

INVESTOR IN PEOPLE

06/14

www.acas.org.uk

Ref: AL04