



briefing

Employment, Pensions & Benefits - November 2009

New guidance preventing harassment and violence in the workplace launched

Allegations of harassment at work attract a great deal of media interest especially when they are accompanied by eye catching headlines regarding the sums claimed. In the case [Switalski v F&C Asset Management](#) it has been reported that Ms Switalski is claiming between £12 million and £19 million for losses arising out of the sex discrimination, harassment and victimisation she experienced at work.

The lengthy litigation culminated in F&C making an application for a review of the original Employment Tribunal decision and just last week, it was reported that the application failed. The remedies hearing is expected to take place in January 2010.

Harassment was also alleged in the high profile case [EBR Attridge Law v Coleman](#). In that case it was argued that an individual, who is not themselves disabled, should be protected from discrimination and harassment because of their "association" with a disabled person. Earlier this month, the EAT upheld the Employment Tribunal decision that new wording should be added to the Disability Discrimination Act 1995 to prohibit "associative discrimination".

The [Coleman](#) case will be just one of the key developments covered in our 2009 employment law review at next month's Breakfast Club.

What is harassment?

Harassment is unwanted conduct which has the purpose or effect of either violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

The consequences of harassment on an individual can be severe: stress or depression, isolation, loss of confidence, low self esteem and lack of motivation. There are consequences too for the organisation: increased sickness absence, reduced productivity, low morale and high staff turnover. But that's not all. If legal claims are brought there is a risk to reputation and both management time and legal costs will be incurred. There are compelling reasons therefore to tackle harassment and violence at work.

For the first time, joint guidance providing practical help and support to individuals and organisations about harassment and violence in the workplace has been prepared by the [CBI](#), [TUC](#) and the [Partnership of Public Employers \(PPE\)](#). The guidance has the support of the government as well as the [Health & Safety Executive](#), [ACAS](#) and the [Department for Business, Innovation and Skills](#).

The stated aims of the guidance are to:

- Raise awareness and increase understanding of employers, workers and their representatives of workplace harassment and both internal and third party violence.
- Provide employers, workers and their representatives with a framework of response to identify, prevent and manage problems of harassment and all forms of violence at work.

What constitutes harassment and why does it occur?

Harassment can occur on a number of grounds including an individual's sex, sexual orientation, race, religion and belief, disability or age. It includes inappropriate physical contact, racist, sexist or ageist language for instance, sexual innuendo and offensive jokes. Harassment can be a one-off incident or a more systematic pattern of behaviour and it can be carried out by colleagues, managers or third parties such as clients or customers.

Harassment often takes place because of a personality clash between the individuals, prejudices and stereotypes, poor management style and job insecurity. It is important to remember that harassment is not always face-to-face. It can occur over the telephone, by letter, by text or through social networking pages, this is called cyber-bullying.

What is the scale of the problem? According to the [British Crime Survey 2006/07](#) referred to in the guidance:

- There were an estimated [684,000 workplace incidents](#) comprising 288,000 assaults and 397,000 threats of violence.
- [1.7%](#) of working adults in England and Wales were the victim of one or more violent incidents at work.
- [22%](#) of workers who had contact with members of the public thought it very or fairly likely that they would be threatened at work in the next year.
- [9%](#) of workers with face-to-face contact with the public thought it very or fairly likely that they would be assaulted.

Although harassment and violence can potentially arise in any workplace certain groups and sectors are more at risk as identified by the Survey. Individuals in the protective service occupations for example police officers were most at risk of violence at work. High rates were also shown for workers in the transport, health, retail and leisure sectors.

Employers are under extensive statutory obligations to ensure, so far as is reasonably practicable, the health and safety at work of their employees and to protect them from reasonably foreseeable violence and aggression. There are obligations arising out of the contract of employment too, including an implied duty to provide a safe working environment and an implied term of trust and confidence. The wide-ranging discrimination legislation also provides protection from harassment and significantly, there is no limit to the amount of compensation that can be awarded in a discrimination claim.

Managing the problems of harassment and violence

Most organisations will already have in place policies and procedures for managing harassment and violence in the workplace. These should now be reviewed to establish whether or not they need to be adapted to take account of the recent guidance.

This states that when considering existing or developing new procedures employers must:

- Ensure, so far as it is reasonably practicable, the health, safety and welfare of their workers.
- Assess the risk to their workers, (including the risk of reasonably foreseeable violence), decide how significant these risks are, decide what to do to prevent or control the risks and develop a clear management plan to achieve this.
- Establish clear grievance and disciplinary procedures consistent with the [ACAS Code of Practice](#).
- Consult with the workforce and their representatives about risk assessments and action arising from them.
- Ensure that everyone is aware of their harassment and violence policy and their responsibilities in relation to it. The onus is not simply on employers and managers. It is recognised in the guidance that workers have an important role to play as well in identifying and reporting incidents.

Other matters that employers should consider include a provision that harassment will be treated as a disciplinary matter, a statement setting out clearly what constitutes unacceptable standards of behaviour and making it clear what support is available for the victim.

Note that bullying is not covered in the guidance but the guidance is intended to complement the recommended measures for tackling bullying at work.

The guidance can be accessed at www.bis.gov.uk

More information

If you would like further information, or would like to discuss the potential impact of these decisions on your organisation, please call Debra Gers, or your regular Morgan Cole contact.



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