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Stamping out workplace harassment

As the economic downturn bites, workplace pressures rise and tempers fray. Employers need firm policies to prevent unacceptable behaviour and avoid lawsuits and absenteeism.



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When does an off-colour joke become offensive? Is it always unacceptable for a manager to touch an employee? And could a one-off loss of temper be seen as bullying?

Sadly, the answers to these questions are not clear cut. What is clear, however, is the high cost of harassment. Employees who feel bullied or abused may possibly go to an employment tribunal. But they are more likely to go sick, or complain to colleagues, leading to an unhappy and inefficient workplace.

What constitutes harassment?

One of the hardest lessons to learn is that in law, harassment is often in the eye of the beholder. Never mind that a manager may think his nickname for an employee is accepted as a mark of friendship. If the employee resents it, the law may well accept their sense of hurt.

We've all read reports from employment tribunals where employees have won large awards despite the employer claiming no suffering had been caused. If the staff member can show a persistent pattern of behaviour that has made them feel bullied or harassed, they may have a case.

Take Nanette Bowen, an information manager for an NHS trust in Wales. She was awarded £150,000 after suffering bullying and sexual harassment. A tribunal found the health trust to blame for her nervous breakdown when, after 28 years with the NHS, a new manager restricted her role and subjected her to sexual innuendoes.

Or take Matt Driscoll, entitled to £800,000 from the News of the World after the newspaper sacked him when he was sick. His employer said he was too ill to carry on with his job, but the tribunal found he suffered severe stress from 'a consistent pattern of bullying behaviour'. Senior management at the paper sent Driscoll a barrage of emails, phone calls and visited his home. They said they were encouraging him to return to work, but the tribunal viewed it as bullying.

In both these cases the bullying was persistent and nothing was done to prevent it. Both awards were large because there is now no limit to compensation for discrimination and harassment.



Preventing discrimination

The answer? All employers need an effective policy to prevent harassment and encourage employees to speak out if they think it is occurring. It is no defence if the offender was an employee, not a manager.

Nowadays, we're all aware that discrimination is unacceptable on the grounds of race, sex, religion, sexual orientation or disability (remember that disability includes illness, as in the Driscoll case).

Harassment is not just bullying or violence. It can include flirting – especially if it involves touching – and innuendo, even if meant in jest. Some employees will be more sensitive than others, and employers should respect this.

Everyone loses their temper from time to time, and workplace pressures are rising in the current economic climate. But the law says employees are entitled not to suffer verbal abuse, including swearing. The odd flash of temper may be accepted; a persistent barrage of abuse will not.

Conclusion

The best defence against harassment claims is a clear statement that the company will not tolerate discrimination or abuse of any kind, allied to an equal opportunities policy. However, Nanette Bowen's NHS employer had equal opportunity policies that did not protect her. Make sure you have effective training for managers and an effective grievance system that staff trust.

For more information on how to avoid discrimination, or to discuss any issue of employment law, please contact Debbie Taylor on 0845 241 3387.