Bullying and Harassment

Taking legal action about bullying or harassment at work

An overview

Many people experience unpleasant treatment at work at the hands of their managers and fellow colleagues. The problem is, how do you know whether this amounts to bullying or harassment? And, even it does, what can you do about it? This factsheet gives a general overview of bullying and harassment law and guidance on the types of claims you can bring.

What is bullying and harassment?

Unpleasant treatment does not automatically amount to bullying and/or harassment. It is important to remember that being treated in an unpleasant way does not necessarily mean you'll be successful in bringing a claim:

- **Bullying:** A wide range of misconduct. It can be summarised as offensive, intimidating, malicious, insulting behaviour or conduct intended to humiliate, denigrate or injure the recipient. Whatever form this takes, it is behaviour that is unwarranted and unwelcome to the individual.
- **Harassment:** Unwanted conduct which violates the dignity of an individual in the workplace or which creates an intimidating, hostile, degrading, humiliating or offensive environment for that individual. The comments or behaviour must be viewed as demeaning and unacceptable to the individual. Harassment can also have a specific meaning under different pieces of legislation (see below).
- Bullying and harassment at work can take many forms. Some of the most obvious examples are:
  - Managers/supervisors may subject you (as their subordinate) to humiliation and ridicule, make unjustified criticisms, set impossible deadlines, impose an excessive amount of work, remove your responsibilities, give you menial and pointless tasks to carry out, refuse your requests for leave or block your promotion.
  - A fellow employee (of the same grade as you) may bully or harass you by engaging in conduct involving threats, abuse, teasing, practical jokes, banter, unwelcome gifts and physical assault.
  - Groups of employees may victimise you (an individual employee).
  - A more unusual (although not uncommon) situation is that you may be bullied by equal or junior colleagues, as opposed to the classic scenario of abuse of power by line management.

Discrimination and harassment

It is not possible to bring a direct complaint of bullying to an Employment Tribunal, but you may be able to bring complaints under laws dealing with discrimination and harassment. For example:

- **Sex:** The Sex Discrimination Act protects individuals against discrimination and victimisation on the grounds of sex, marriage or gender reassignment. For more detailed guidance on sex discrimination see the factsheets entitled "Sex Discrimination", "Health & Safety Issues for Pregnant and Breastfeeding Women" and "Maternity Rights" on the Russell Jones & Walker website.
- **Race:** The Race Relations Act and associated legislation gives similar protection against harassment on the grounds of colour, nationality, and ethnic or national origin. For more detailed guidance on race discrimination see the factsheet entitled "Equal Respect" on the Russell Jones & Walker website.
- **Disability:** The Disability Discrimination Act provides similar protection against victimisation for those with a disability. For more detailed guidance see the factsheet entitled "Disability Discrimination" on the Russell Jones & Walker website.
- **Sexual Orientation:** Regulations give protection to individuals against discrimination and harassment on the grounds of sexual orientation. For more detailed guidance on discrimination on the grounds of sexual orientation see the factsheet entitled "Sexual Orientation" on the Russell Jones & Walker website.
- **Religion and Belief:** Discrimination and harassment on the grounds of religion or belief are also outlawed by regulation. For more detailed guidance see the factsheet entitled "Religious Discrimination" on the Russell Jones & Walker website.
- **Age:** Discrimination and harassment on the grounds of age is also unlawful. For more detailed guidance on age discrimination see the factsheets entitled "Age Concerns", "Age Discrimination in Recruitment and Selection", "Age Discrimination and Redundancy", "Age Discrimination and Benefits" and "Age Discrimination and Pensions" on the Russell Jones & Walker website.

All of the above claims are claims that should be brought in the Employment Tribunal. As the victim of bullying and harassment it is also possible for you to bring a claim in the County Court.

Bringing a case in the County Court may be your only option, if the bullying or harassment you have suffered is not covered by one of the prohibited grounds of discrimination set out above. The same is true if you have missed the strict time limits (normally three months less one day) for bringing an Employment Tribunal claim.

Potential claims in the County Court

Stress at work claims

It is very difficult to win a stress at work claim as a result of bullying and harassment at work. This is because the courts have said that for an employer to be responsible for causing an individual employee psychiatric injury, the employer must have foreseen that their behaviour would not only cause the employee to feel dissatisfied, frustrated, embarrassed or upset, but would in fact cause them to suffer a psychiatric disorder. This is clearly a very difficult hurdle for the employee. As a result it is almost always necessary for the employee to have had a prior absence with a stress-related/psychiatric condition before a court will accept that bullying or harassment would result in a psychiatric disorder.

Although you have three years within which to bring a stress at work claim, it is important to remember that as this is a County Court claim and not an Employment Tribunal, you will be at risk of paying the other side's costs if your claim is unsuccessful. Of course, if you do win you are likely to recover your costs from the other side.

Further details of stress at work claims are contained in the factsheet entitled "Occupational Stress" which is available on the Russell Jones & Walker website.

The Protection from Harassment Act 1997

Claims brought under the Harassment Act 1997

This act does not define harassment, so many situations in which an employee is caused alarm or distress may be covered.

This means that the types of claim which can be brought under this Act are much wider than those possible under the anti-discrimination legislation set out above.

All you need to show is that in the course of your employment you have been harassed by another employee. Provided that you can demonstrate a sufficiently clear link between your work and the harassment you suffered, your employer will be liable for this harassment.

It is not necessary for you to prove that you have suffered either a physical or a psychological injury. You only need to prove you have been harassed on at least two occasions. It is rare for harassment of an individual to be a one-off incident so this requirement is not normally problematic.

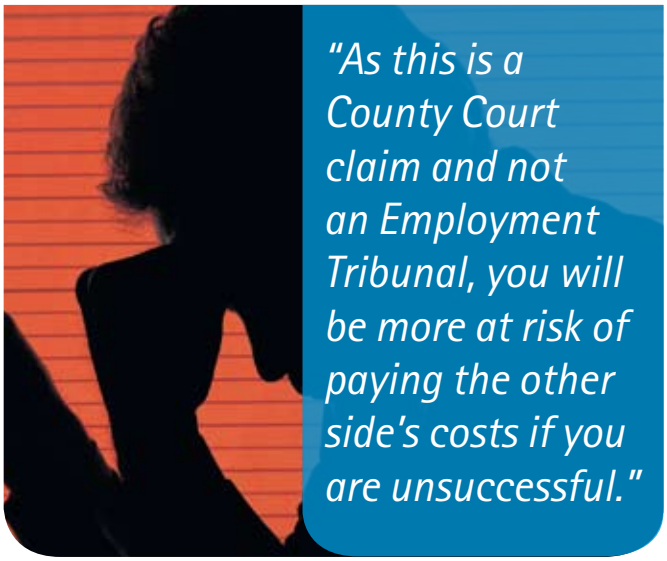
If you are complaining about a one-off incident, you will not be able to bring a claim under this Act. You may have to rely on the anti-discrimination legislation set out above instead.

The time limit for bringing claims under this Act is six years. As with stress at work claims, a claim under the Protection from Harassment Act must be brought in the County Court, and therefore you are at risk of paying the other side's costs if you lose. Equally, you're likely to recover your own costs if you win.

Conclusion

Being the victim of bullying and harassment is very distressing, but there is now increased protection for individuals who have experienced such behaviour in the workplace.

Please note that this factsheet is only a basic guide to a complicated area of law in relation to your own individual circumstances you should seek specialist advice.



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