

Bullying and Harassment

Taking legal action about bullying or harassment at work

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 if 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?

Being the victim of bullying and harassment is very distressing.

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

Bullying - This includes 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 - This is 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 the Equality Act 2010 ('The Act') as discussed in more detail below. As of 1st October 2010, all existing equality legislation was consolidated into 'The Act'.

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 or physical assault
- Groups of employees may pick on 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 an abuse of power by line management
- You may also be protected under 'The Act' if you are harassed because of someone else (i.e. because your child is disabled, or because your sibling is gay), or because the harasser perceives you to have a characteristic that you do not (i.e. because you are wrongly thought to be disabled or non-British).



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Discrimination and harassment

It is not possible to bring a complaint of 'bullying' to an Employment Tribunal, but you may be able to bring complaints under 'The Act' if you can establish that the harassment and/or discrimination is because of a particular reason covered by 'The Act' as follows:

Sex - 'The Act' protects individuals against discrimination, including harassment, because of/ or related to 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 Slater & Gordon website.

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Race - 'The Act' gives similar protection against harassment because of or related to colour, nationality, and ethnic or national origin. For more detailed guidance on race discrimination see the factsheet entitled '**Equal Respect**' on the Slater & Gordon website.

Disability - 'The Act' provides similar protection against discrimination and harassment because of or related to disability. For more detailed guidance see the factsheet entitled '**Disability Discrimination**' on the Slater & Gordon website.

Sexual Orientation - Regulations give protection to individuals against discrimination and harassment because of or related to sexual orientation. For more detailed guidance on discrimination on the grounds of sexual orientation see the factsheet entitled '**Sexual Orientation**' on the Slater & Gordon website.

Religion and Belief - Discrimination and harassment because of or related to religion or belief are also outlawed by Regulation. For more detailed guidance see the factsheet entitled '**Religious Discrimination**' on the Slater & Gordon website.

Age - Discrimination and harassment because of or related to 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 Slater & Gordon website.

All of the above claims are claims that should be brought in an Employment Tribunal.

If you have suffered bullying and harassment at work it is also possible for you to bring a claim in the County Court if the bullying and harassment has caused you a psychiatric injury.

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.



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The same is true if you have missed the strict time limits (normally three months less one day from the date of the discrimination) for bringing an Employment Tribunal claim.

If you are thinking about making an employment tribunal claim, you will first need to notify details of your claim to ACAS, who will then offer early conciliation to try to resolve the dispute. The conciliation period can be up to one month. If the claim does not settle, ACAS will issue a certificate confirming that the mandatory conciliation process has concluded.

There are changes to time periods within which to lodge claims to allow for the period during which a claim is with ACAS. The period within which a claim is with ACAS will not count for calculation of time limits; and if the time limit would usually expire during that period, or within the month after the certificate is issued, then you will have up to one month following receipt of the conciliation certificate in which to lodge a claim.

The process makes the calculation of time limits in employment tribunal cases more complicated. Claimants are advised to be aware of limitation issues and seek legal advice promptly. For further information on the ACAS early conciliation process visit: www.acas.org.uk.

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 you psychiatric injury, the employer must have or ought to have foreseen that their behaviour would not only cause you to feel dissatisfied, frustrated, embarrassed or upset, but would in fact cause you 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 it was foreseeable that the bullying or harassment would result in a psychiatric disorder.

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The time limit for bringing a stress at work claim is normally three years from the date on which you became ill. Although you have three years within which to bring a stress at work claim, it is important to appreciate that as this is a County Court claim and not an Employment Tribunal claim, you will have to pay the other side's costs if your claim is unsuccessful.

Unless you are backed by insurance to cover the other side's costs, you will be personally liable for those costs. Of course, if you do win you should recover your reasonably incurred 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 Slater & Gordon website.

Claims brought under the Protection from Harassment Act 1997 (PHA) - 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 the PHA are much wider than those possible under the anti-discrimination legislation set out above. However, PHA claims are becoming increasingly difficult to prove.

You will need to show that in the course of your employment you have been harassed. The threshold for treatment to be regarded as harassment, as opposed to less serious unfair or unreasonable treatment, is high. Essentially, a series of acts must be regarded as oppressive enough to also potentially give rise to a criminal sanction, so an 'unpleasant' incident would not amount to harassment. It is also necessary to demonstrate a sufficiently clear link between your work and the harassment you suffered before your employer can be considered liable for this harassment.

It is not necessary for you to prove that you have suffered either a physical or a psychological injury as a result of the harassment. You only need to prove that 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 the PHA. You may have to rely on the antidiscrimination legislation set out above instead, if this is applicable.

The time limit for bringing a claim under the PHA is 6 years from the date of the harassment.

You have to pay a fee when you file your claim in the county court. Fees are payable when you issue a claim and at various stages of the litigation process including a hearing fee. The most common fees are set out in the leaflet "EX50." A fee remission scheme is also in place. For further information visit: www.justice.gov.uk/courts/fees.

Please note that this factsheet is only a basic guide to a complicated area of law. You should seek specialist advice in relation to your own individual circumstances and do so promptly to avoid time limit issues.

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Please feel free to discuss your own position and concerns.
Contact your nearest office on:

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