

EIS EQUALITY

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The Educational
Institute of Scotland

BULLYING & HARASSMENT

All employees have a legal right to work in an environment that is safe and to be protected from all forms of abuse, violence and harassment.

BULLYING AND HARASSMENT POLICY

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INTRODUCTION

All employees have a legal right to work in an environment that is safe and to be protected from all forms of abuse, violence and harassment. Among the array of pressures facing teachers and lecturers none is so insidious or so sapping of self-esteem as the threat of violence, intimidation or harassment which many members face on a daily basis.

EIS strategy to promote equality for all members in the workplace includes the development of policies and training on bullying and harassment. Behaviour which excludes, intimidates, threatens or affects the dignity of men and women at work is unacceptable and should not be tolerated.

It is in the interests of all employers to have a clearly stated set of aims and objectives regarding equality of opportunity.

LEGISLATION

The Equality Act

Employers have a duty to prevent unlawful discrimination. The principal legislation under which cases can be taken is the Equality Act 2010. Protection is provided by the Equality Act in relation to the following protected characteristics:

- **Age:** Where this is referred to, it refers to a person belonging to a particular age (e.g. 32 year olds) or range of ages (e.g. 18 - 30 year olds).
- **Disability:** A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.
- **Gender reassignment:** The process of transitioning from one gender to another.
- **Marriage and civil partnership:** Marriage is defined as a 'union between a man and a woman'. Same-sex couples can have their relationships legally recognised as 'civil partnerships'. Civil partners must be treated the same as married couples on a wide range of legal matters.
- **Pregnancy and maternity:** Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavorably because she is breastfeeding.
- **Race:** Race refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.
- **Religion and belief:** Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. Atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.
- **Sex:** A man or a woman.
- **Sexual orientation:** Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.

HARASSMENT

What is Harassment?

Harassment is defined as:-

“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”.

‘Unwanted conduct’ can include any kind of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person’s surroundings or other physical behaviour.

For behaviour to count as harassment in equality law, it has to be one of three types;

- unwanted behaviour related to the protected characteristics (listed previously)
- sexual harassment
- less favourable treatment because of submission to or rejection of previous sex or gender reassignment harassment.

Unwanted behaviour related to the protected characteristics

This is related to age, disability, race, sex, gender reassignment, religion or belief or sexual orientation.

‘Related to’ a protected characteristic covers situations:

- where the harassment is related to the worker’s own protected characteristic. Where a person is abusive to other workers generally, but a particular worker feels harassed because they have a protected characteristic.
- where the worker who is harassed does not have the relevant protected characteristic. For example, a worker might be incorrectly perceived to have a characteristic or they may be associated with a person who has a characteristic, such as a family member. Similarly, a worker is known not to have the protected characteristic, but nevertheless is subjected to harassment related to that characteristic.

Examples:

- *Paula is disabled and is claiming harassment against her principal teacher after she frequently teased and humiliated her about her disability.*
- *During a training session attended by male and female staff, a male trainer directs a number of remarks of a sexual nature to the group as*

a whole. A female member of staff finds the comments offensive and humiliating to her as a woman. She can claim harassment even though the remarks were not specifically directed at her.

- *A member of staff is subjected to homophobic banter and name calling, even though his colleagues know he is not gay. Because the form of the abuse relates to a protected characteristic, i.e. sexual orientation, this could amount to harassment.*

The unwanted behaviour does not have to be specifically aimed at the person who finds it violates their dignity or creates for them an intimidating, hostile, degrading, humiliating or offensive environment.

Example:

A white teacher in a staffroom where most of the other teachers are also white finds the habitual racist comments of another member of staff also create a hostile and intimidating environment for them. This may amount to harassment.

It may also be harassment where the unwanted conduct is related to the protected characteristic, but does not take place because of the protected characteristic.

Example:

A male teacher has a relationship with his female principal teacher. On seeing him with another female colleague, the principal teacher suspects he is having an affair. As a result, the principal teacher makes his working life difficult by continually criticising his work in an offensive manner. The behaviour is not because of the sex of the male teacher, but because of the suspected affair, which is related to his sex. This could amount to harassment related to sex.

Sexual Harassment

Sexual harassment takes place when a person does something of a sexual nature (which might be verbal, non-verbal or physical) which has the purpose or effect of:

- violating a person's dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

'Of a sexual nature' can include unwelcome sexual advances, touching, forms of sexual assault, sexual jokes, displaying pornographic photographs or drawings or sending emails with material of a sexual nature.

Women are overwhelmingly the victims of sexual harassment and the harasser is usually male. However, harassment can happen to men by women, to women by women or to men by men. The intention of the harasser is not important, the effect is.

Sexual harassment is about power, asserting superiority and exerting control.

Any incident of sexual assault, rape or 'stalking' is a criminal offence and should be reported to the police

Less Favourable Treatment Because of Submission to or Rejection of Previous Sex or Gender Reassignment Harassment

This type of harassment is best illustrated by examples.

Example:

A principal teacher propositions one of his department members, she rejects his advances and is then turned down for promotion which she believes she would have got if she had accepted her line manager's advances.

This kind of harassment also applies where the person who treats the individual badly is someone different from the person carrying out the original harassment.

Slightly Different - Third Party Harassment

An employer can be held responsible for harassment of a worker by someone who doesn't work for them. This is sometimes called 'third-party harassment'.

The employer will become legally responsible if they know that their worker has been harassed by someone who does not work for them at least twice before but they have failed to take appropriate action to protect the worker from further harassment. It does not have to be the same person harassing the worker on each occasion.

Example:

A school is aware that a female teacher has been sexually harassed on two separate occasions by two different parents. Once the school has been told or has found out about the first two occasions, they will be liable for a third act of harassment towards the same teacher, if they have failed to take reasonably practicable steps to prevent further harassment. This will be the case even if the third act of harassment is committed by an unconnected parent.

For All Types of Harassment

The following should be borne in mind;

- The word 'unwanted' means 'unwelcome' or 'uninvited'. This does not mean that express objection must be made to the conduct before it is considered unwanted. A teacher does not need to make it clear in advance that those offensive or stereotyped remarks are unwanted.

Example:

A teacher of Indian ethnic origin has lived in Scotland all her life. After she gives notice that she intends to resign from her job, the principal teacher comments, 'We will probably bump into each other in future, unless you are married off in India'. This remark is unwanted conduct related to her ethnic origin which, though unintended, has the effect of violating her dignity. It is reasonable for her to take what was said as a stereotypical view of Indian women and to be offended.

- In some situations, a woman may need to make clear that unexceptional behaviour is unwanted, before it can be considered harassment.

Example:

A woman is asked for a drink after work on a few occasions by her colleague. She makes an excuse and says she cannot come. On the third occasion, she explicitly states that she does not want to go for a drink with him at all. Her colleague continues to ask her. His continued invitations after she has stated clearly that she does not want to go out with him may be harassment. On the first few occasions, before this was clear, his invitations are unlikely to be considered harassment.

- A serious one-off incident may also amount to harassment.
- If the person carrying out the unwanted behaviour actually intends to violate the other person's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for them, this will of itself amount to harassment and you will not have to consider the effect on the individual.

Harassment can come from colleagues, management, students and pupils, members of the public or parents. It can happen because of the sex of the victim, race, ethnic origin or nationality, age, sexual orientation, religious, political or trade union beliefs and activities, physical or mental ability or disability.

People should not be discriminated against or victimised because of trade union membership or for supporting people who make complaints about harassment.

All forms of harassment are unacceptable for whatever reason.

Effects of Harassment

People who experience harassment may feel guilty, humiliated and too embarrassed to complain. They will also experience anger and other unsettling emotions. Stress may lead to loss of sleep, headaches and other physical symptoms. In turn this may lead to increased absences, loss of performance or interest in work which will have a long term effect on the person as well as their colleagues. (See also section on 'Effects of Bullying'.)

It is important to establish the origins of workplace stress. These can be rooted in unacceptable workload, deadlines or targets; in poor, untrained or over stretched managers or in a workplace culture which encourages blame or is subject to constant and unnecessary change.

If harassment is allowed to continue there may be formal complaints and, therefore, heavy costs involved.

BULLYING

What is Bullying?

The most widely used definition of bullying at work is as follows:

“Persistent, offensive, abusive, intimidating, malicious or insulting behaviour, abuse of power or unfair penal sanctions which makes the recipient feel upset, threatened, humiliated or vulnerable which undermines their self-confidence and which may cause them to suffer stress.”

As strong as these words may be they do not convey the sense of devastation of an individual, family and friends which can result from workplace bullying.

Examples of bullying behaviour are:

- intimidation and aggression
- withholding information
- setting impossible deadlines or tasks
- disparaging comments or remarks, often in front of others
- blocking promotion or staff development opportunities
- constantly changing objectives and goals
- taking credit for others achievements or initiatives
- constantly changing the remits and responsibilities of others
- isolating certain individuals and limiting consultation on important issues

This is not an exhaustive list. There is a whole range of subtle, insidious behaviour which may constitute bullying. This behaviour can be directed at individuals one at a time or groups of individuals. People are too afraid of becoming the next target to do anything to support the person being bullied. They may be afraid also that a complaint will be construed as an inability to cope. A number of factors combine to make it difficult to challenge. It is possible that bullying has become institutionalised through badly formed and ill thought out procedures used to monitor workplace performance e.g. an ill-conceived development planning process.

It is not possible to make a direct complaint to an Employment Tribunal about bullying as it is not related to a protected characteristic.

Cases of bullying may be covered by Health and Safety at Work legislation. Health and Safety at Work legislation places a duty of care on employers, as far as is reasonably practicable, to ensure the health, safety and welfare at work of all their employees. The Health and Safety Executive (HSE) defines stress as “the adverse reaction a person has to excessive pressure or other types of demand placed upon

them". In tackling work-related stress, HSE reminds employers that looking after the health of employees includes "taking steps to make sure that employees do not suffer stress-related illness as a result of work". Further information can be obtained from the HSE website at <http://www.hse.gov.uk/stress/>

Bullying is Poor Management

There are many reasons for this type of behaviour. It may in part be due to the personality of the bully. Often it is attributable to a workplace culture which provides organisational justification for this type of behaviour.

Workplaces where bullying is likely to occur have certain characteristics which may include the following:

- insecure, aggressive management
- organisational change and uncertainty
- envy fostered among colleagues
- lack of respect for people's work or opinions
- lack of opportunity or a forum to voice opinions collectively
- fear of alternative views
- poor working relationships
- excessive, demanding workloads
- no opportunity to discuss or resolve problems
- insecurity deliberately fostered

Effects of Bullying

On the individual

Workplace bullying can lead to an individual's health being destroyed, family life ruined and career ended.

Leading experts on stress suggest the effects of bullying can produce symptoms similar to those suffered by trauma victims. Stress can cause a variety of physical and emotional symptoms such as

- headaches
- nausea
- high blood pressure
- sleeplessness
- loss of appetite
- anxiety
- panic attacks
- depression

- irritability
- aggression
- abuse of or increased use of alcohol, tobacco, drugs

These symptoms often lead to further more serious physical and mental health problems not only for the victim but the victim's family.

On the organisation/workplace

People working in a hostile environment or who are fearful and resentful do not work well. The result may be an increase in the rate of short term and long term absences and deterioration in quality of work and commitment. All of the systems which operate to make a good working environment break down. Teaching and learning suffer.

The behaviour, if left unchecked, may lead to grievance and disciplinary procedures being used thus increasing stress in the workplace. There may also be recourse to remedy in law which is time consuming and costly to both employer and employee.

Behaviour which is a criminal act should be reported to the police.

PREVENTING BULLYING AND HARASSMENT

Bullying and harassment should not be tolerated in the workplace. Employees have a right to work in an environment in which they can contribute, have their opinions and work respected, and where diversity is valued.

Employers have a duty of care towards their employees and a duty not to discriminate. Whilst there may be remedy in law for some people subjected to offensive behaviour, reliance on the law alone will not provide protection for those who have been bullied or harassed nor prevent bullying and harassment from occurring.

A distinguishing characteristic of bullying and harassment is that those subjected to it are vulnerable and often reluctant to complain. They may be too embarrassed or intimidated or feel their complaint will be trivialised. They may also fear reprisal. Usually, what most people want is for the behaviour to stop.

It is better to challenge the root causes of bullying and harassment through effective policies and practice. Promoting good management and workplace practices is more effective than attempting to remedy the effects of a hostile and threatening workplace culture once the damage is done.

One of the defences which may be used by an employer in cases of harassment is that all steps which could be reasonably taken to prevent the behaviour were taken. It is, therefore, in their interests to have policies which are operational. This will include training not solely on the reasons for, definitions and effects of bullying and harassment but interpersonal, behavioural, workplace organisational and management skills. Training opportunities should be provided for all employees.

EDUCATIONAL CONTEXT

Harassment of pupils/students by teaching staff is an intolerable infringement of rights and betrayal of trust. Bullying and harassment of teaching staff by pupils and students is equally unacceptable. Very often teachers are reluctant to admit to bullying or harassment by pupils either within or outwith the school environment for fear of being considered incompetent by colleagues or fear of reprisal.

New technology can be used. There have been numerous reports on the use of text messaging, e-mail or social media to bully and harass.

All forms of bullying and harassment which apply to teaching staff and learners also apply to others who use or work in schools, colleges and universities.

AN EFFECTIVE POLICY

An effective policy is one that is agreed, a result of proper consultation and negotiation between unions and employers and is widely known and put into practice.

The legal basis of the policy should be made clear as well as the intention to provide a workplace in which equality of opportunity for all employees is achievable.

The policy should include:-

- declaring the type of working environment that is to be achieved
- providing definitions of bullying and harassment
- that bullying and harassment are not acceptable and will not be tolerated
- that every employee will be treated with dignity and respect
- that every employee will be made aware of their rights to fair treatment
- that bullying and harassment are disciplinary offences

There should also be:-

- a clear indication of the responsibilities of employers, management and employees under health and safety at work legislation
- a commitment to review and monitor the policy including any complaints made
- a formal employer's agreed procedure for pursuing a complaint

As well as a high profile commitment to the policy other measures may include:-

- appropriate training of employees at all levels
- training for managers in the conduct of hearings
- provision of trained counsellors
- review of management practices and structures
- monitoring workplace stress
- inclusion of the policy in recruitment or induction packs

A Formal Workplace Complaint using your Employer's Agreed Procedures

This should include:-

- a statement regarding the purpose of the procedure
- definitions of bullying and harassment
- an informal stage where a complaint may be discussed
- the opportunity for confidential discussion of a complaint

- a formal stage
- a clearly set out guideline of the steps to be taken in the event of a formal complaint being made
- guidelines of steps used during the procedures including time limits
- advice on disciplinary action or alternatives to disciplinary action
- advice regarding the rights to representation
- a statement regarding victimisation of those making a complaint
- a commitment to provide a same sex officer
- a clear statement that the procedure does not alter rights relating to formal grievance procedure or further action of a legal nature

Advantages of Having a Policy that Works

- good relationships in workplace
- promotion of equality of opportunity and social justice
- avoiding stress, hostility and formal procedures
- creating a safer, healthier teaching and learning environment

ADVICE TO MEMBERS

IT IS IN YOUR BEST INTERESTS TO SEEK ADVICE FROM YOUR EIS REPRESENTATIVE.

ADVICE TO MEMBERS: If you are a victim of bullying and harassment

Always seek advice

Do not ignore it

Your employer is obliged to have good policies to deal effectively with bullying and harassment. If you feel you are being subjected to bullying or harassment, do not feel that you have to ignore it or that it is your fault.

Seek help and support

Seek advice from an EIS Representative. They will be able to offer support and advise you of the best course of action.

Take notes

Keep a note of incidents and the dates, times and places and the effects on you, as soon as possible after the event. This will be valuable if you decide to pursue your complaint formally. Wherever possible get witnesses and/or medical evidence if appropriate.

Record tasks you are asked to do and timescales. Keep a note of good reports about your work.

Consider whether or not you are alone or if other people feel the same way or have been subjected to similar behaviour. You may well find you are not alone.

Asking for the behaviour to stop

You may feel confident enough to ask those responsible for this behaviour to stop or you may wish to do this with the help of your representative. It is important to let the person know that you do not like the behaviour.

If you feel you cannot face the person you may wish to write. If you do decide to put it in writing seek advice from your EIS Representative. Ensure that you state clearly the behaviour you find objectionable and that you wish it to stop.

If the behaviour continues after you have asked the person to stop, you may wish to consider, with the assistance of your EIS Representative, pursuing a formal complaint using your employer's agreed procedures.

Some incidents may be so serious that your EIS Representative may wish to refer your case to the local association secretary for your area.

In the event of disciplinary action being taken with regard to the allegations, you may be required to give evidence at a hearing and your EIS Representative will be able to provide you with advice.

ADVICE TO MEMBERS: If you are a witness to bullying and harassment to another colleague

Everyone has a responsibility to prevent this behaviour. Often inaction encourages the behaviour to continue. Seek advice on what to do from your EIS Representative. If the victim decides to pursue a formal complaint you may be called upon to give oral or written evidence.

Members should not experience bullying/harassment as a result of taking part in trade union activities or supporting or giving evidence on behalf of a colleague. If this occurs, members should seek advice from their EIS Representative as soon as possible.

Any incident of assault or violence should be reported to the police.

ADVICE TO MEMBERS: If you are accused of bullying or harassment

Bullying and harassment are serious matters. Most authorities, colleges and universities have agreed policies on bullying and harassment. Employers have a duty of care towards their employees and a duty not to discriminate on grounds of any of the protected characteristics.

If you are advised that your behaviour is causing distress or upset to a colleague then you should stop and consider why this is the case. What you consider to be harmless fun, strong management or a personality trait may be causing distress to others.

Listen carefully to the complaint

It may be that this is an informal approach alerting you to the behaviour.

Do not assume the person complaining is overreacting

People rarely make such complaints frivolously.

Stop the behaviour at once

Consider what has been said and try to put yourself in the position of the other person. You may not realise that your behaviour has caused distress.

Seek advice

If you do not understand the complaint seek advice from your EIS Representative. If you were acting in a management capacity consult the authority. If your authority fails to provide advice and assistance you should seek advice from your EIS Representative.

If you feel the complaint is unjust or malicious

Seek advice from your representative.

Ensure you are familiar with the existing agreed procedures

In the event of any formal proceedings ensure you have proper advice and representation.

ADVICE TO REPRESENTATIVES

All members are entitled to advice, support and help from the EIS.

Employment legislation requires that internal procedures are exhausted before proceeding further.

You should:-

- ensure you know existing agreed policies on equality, bullying and harassment
- support and publicise EIS policies against bullying and harassment
- ensure you know EIS advice to members
- ensure you know grievance and disciplinary procedure
- refer to EIS Representative's handbook/Health and Safety handbook

Members may approach you for advice on this issue. It may be because they feel they have been subjected to harassment or bullying.

You should:-

- treat cases of bullying and harassment sensitively and seriously
- consider if one complaint is an indication of a widespread problem
- ensure confidentiality
- advise the member(s) of existing procedures
- accompany the member(s) to meetings if called
- take notes of meetings

You should remember that people are reluctant to complain about such behaviour and very often approach you after having tolerated it for a long time. They will be feeling very vulnerable. Ensure that the member(s) are fully aware of policies relating to this issue. Do not judge or minimise the complaint. Do not exert pressure on the member.

Someone who has been accused of this type of behaviour may also approach you. The person may either deny the behaviour took place or not recognise that the behaviour is unacceptable. Ensure that the member is fully aware of policies and advice relating to this issue.

The most important advice is the EIS protocol on casework handling:

5. Grievance Procedure

5.1 The EIS will provide advice to any member regarding grievance procedures,

including any member acting in a management capacity, subject to the provisos set out below.

5.2 The EIS will not normally provide representation to a member who is acting in a management capacity in a grievance.

5.3 However, in certain circumstances representation may be provided. In deciding upon such representation consideration will be given to the nature of the grievance, including in particular whether the grievance relates to a decision of a member acting in a management capacity implementing the employer's policies, or to a decision otherwise involving an action or the exercise of judgement by a manager. Account will also be taken of the level of support provided to the member by the employer.

5.4 In considering representation the EIS has no obligation to defend the policies, procedures and practices of any employer.

5.5 Where a member raises a complaint in terms of Harassment/Bullying against another member advice should be provided to both members if requested. As in 5.3 above, in certain circumstances the EIS may provide representation to a member who is acting in a management capacity.

5.6 It is the duty of the employer to provide legal advice and assistance where necessary to employees exercising management functions on its behalf. If an employer fails in this duty the EIS will give consideration to the provision of representation to the member to pursue a grievance against the employer.

5.7 Where members are in conflict on an issue advice/representation will not be provided by the same official.

'EIS Representatives Handbook: Support Policy and Advice'

Contact your local association secretary:-

- for advice on this issue
- if you feel the situation is too difficult or serious for you to deal with
- if both parties involved are members and ask for support or representation

As an EIS Representative you should not tolerate bullying or harassment arising from your trade union duties/activities.



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