

Wexford Chamber of Commerce H R Forum

Bullying at work

April 28th 2009



MJ O'Connor Solicitors

Bullying at Work

Understanding Bullying at work and its consequences

- The law
- Liability
- Limiting liability
- Handling complaints
- Guidelines



Bullying and the Law

- Employment Equality Acts 1998 to 2004
- Safety Health and Welfare at Work Act 2005
- Industrial Relations Acts 1946 to 1990
- Unfair Dismissals Acts 1977 to 2005
- Common Law principals
- Case law



Employment Equality Acts

- promote equality
- Outlaws discrimination and harassment on nine grounds
- Prohibits victimisation
- allows positive measures to promote equality
- an employer is liable for acts of an employee during the course of his/her employment unless reasonable steps taken to prevent
- Harassment is a form of discrimination



Safety Health and Welfare at Work Act

- Bullying is a threat to safety at work
- general duty on employers to provide safe place of work
- includes mental/psychological wellbeing
- obligation to prevent in as far as practicable risk to employees
- obligation to conduct risk assessment
- obligation to prepare safety statement based on risk assessment



Unfair Dismissals

- most common redress taken under these acts
- constructive dismissal – Employment Appeal Tribunal
- Liz Allen –v- Independent Newspapers (2001)
- Kennedy –v- Foxfield Inns (1995)



Industrial Relations Acts

- Complaint to Rights Commissioner
- referral to Labour Court
- Dispute relating to work



Common Law

- duty of care
- Trust and confidence
- breach of contract
- negligence
- Vicarious liability



The Fall out - liability

Cluster bomb

- Unfair dismissal 2 years compensation
- Equality Tribunal 2 years plus recommendations
- RC/LC non binding recommendations
- HC/CC damages



Quigley -v- Complex Tooling case (2005 and 2008)

Principal set down – bullying must:

- be repeated
- be inappropriate
- undermine the dignity of the employee at work



Definition of bullying

Workplace bullying is repeated, inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work.

An isolated incident of the behaviour described in this definition may be an affront to dignity at work but, as a once off incident, is not considered to be bullying



New potential liability

Vicarious liability

- UK case law
- Extended VL to incidents of bullying where statutory duty was breached by employee – employer held liable
- easier burden of proof



Limiting Liability

Effective policies and procedures

- have policies
- implement policies
- revise and update policies
- follow them
- training
- absence of policies is usually fatal
- defence in Section 15 EEA – took such steps as were reasonably practicable



Guidance

- Equality Authority SI 78/2002 – code of practice on Sexual Harassment and Harassment at Work
- Entemp SI 17/2002 - Code of practice detailing procedures for addressing bullying in the workplace
- HSA – code of practice on the prevention and resolution of bullying at work
- ESRI Report on work place bullying to Department of Entemp 2007



Dealing with a complaint

Treat all complaints seriously

- check your policies
- formal or informal
- take action
- be vigilant even where complaint is not made
- do nothing to compromise the process
- don't delay
- keep communication lines open



Informal procedure

- designate appropriate trained person to deal with complaint
- gather information
- inform accused of complaint, give full account of all information
- If satisfied complaint may constitute bullying get consent of both parties to use informal procedure
- agree method to progress issue, eg
 - Meeting to resolve issue
 - Mediation
 - Intervention of another party
 - Changing work situation
- Follow up to ensure effective resolution



Formal procedure

- get complaint in writing
- adopt fair procedures
 - Employee must be made aware of full allegation made against them
 - Must be given full opportunity to respond
 - Right to representation – legal or not?
 - Fair and impartial determination of issues
 - Right to appeal
- initiate investigation



The Investigation

- agree terms of reference
- select investigators – must be appropriate, impartial and not compromised
- fair procedures at all times
- avoid time delays
- keep records
- remember discovery – hand written notes!



Investigation step 1

- meet complainant
 - Outline procedures
 - Ensure he understands
 - Get details and examples
 - Names of witnesses
 - Establish what outcome he wishes to see
 - Obtain supporting evidence



Investigation step 2

- meet alleged perpetrator
 - Outline procedures
 - Ensure he understands
 - Give copy of complaint in full and any supporting evidence
 - Consider suspension with pay if necessary



Investigation step 3

- meet alleged perpetrator again as often as required
 - Obtain his version of events
 - allow him defend himself, produce supporting witnesses or evidence
 - afford him opportunity to question witnesses
 - obtain other supporting or corroborative evidence
- allow him fair procedures and right of representation



Investigation step 4

- interview witnesses to obtain
 - Signed and dated statements
 - names of any other relevant witnesses
 - any other relevant supporting evidence



Investigation step 5

- meet both parties again to allow them comment on all information
 - question statements etc



Concluding the investigation

- The investigation may conclude:
 - that the complaint was well founded
 - that there was no evidence to substantiate the claim
 - that there was insufficient evidence to conclude for or against

Conclusion must be based on sound objective evidence

- report in writing on findings to both parties before recommended action is taken
- If complaint is upheld disciplinary action may be appropriate
 - Follow usual procedures
 - Apply appropriate penalty, not disproportionate
 - Advise of right to appeal



Common questions

- can a single incident be bullying?
- is a lack of policy fatal?
- is it sufficient to have a standard policy?
- should I get training for managers?
- is there a right to legal representation?
- can I allow him bring his mother in?
- can actions outside work be bullying at work?
- what if I cannot find out who sent the e mail?
- can I investigate if I have been involved?



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