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Bullying, Harassment and Discrimination

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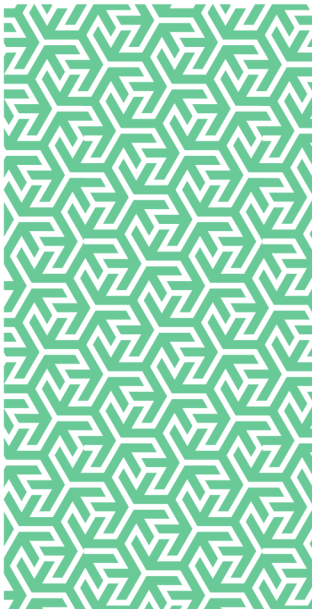
Bullying, Harassment and Discrimination

Introduction

Whilst the majority of us would like to think bullying, harassment and discriminatory practices in the workplace were a thing of the past, the recent media coverage[1] highlighting over a hundred reported cases of harassment, racism and assault at the fast food giant McDonald's is a reminder that these are still issues that need addressing.

This is endorsed by an evidence based review of 'Bullying and incivility at work'[2] published by the Chartered Institute of Personnel and Development (CIPD) in 2022, which stated that "interpersonal conflict and uncivil behaviour, such as bullying and harassment, are remarkably common in the workplace. The persistence of such serious incidents highlights that 'workplace incivility' is a major HR issue."

As well as damaging the image of this well-known global brand, it seems quite probable that the highlighting of these failures could well lead to the organisation becoming embroiled in costly civil action, as well as making recruitment and retention in an already challenging environment even more difficult.

However, the effects of an environment where bullying and harassment have become routine are likely to be most acutely felt by the individual victims, with consequences that can be devastating to their wellbeing and careers. Even one-off events can leave victims feeling traumatised, anxious and isolated, particularly when the perpetrators are in positions of authority.

Clearly the development of a "toxic culture" within any workplace can significantly undermine the performance and sustainability of the organisation, and indicates a significant lack of oversight, understanding and control on the part of management.

So it makes absolute sense to ensure good risk management principles underpin human resource strategies and processes to support the development of a fair and just culture, in order to get the best out of the organisation's most valuable assets – its people.

Definitions

Bullying

There is no single legal definition of bullying, but it can be described as unwanted behaviour from an individual or group that is either:

— Offensive, intimidating, malicious or insulting

— An abuse or misuse of power that undermines, humiliates, or causes physical or emotional harm to someone

In some circumstances bullying may also be classed as harassment, which is unlawful if it's related to certain 'protected characteristics' under discrimination law (the Equality Act 2010).

Bullying that's not classed as harassment could still lead to other legal issues, for example, if it contributes towards constructive dismissal.

There may also seem to be some overlap between the above and the Health and Safety Executive's (HSE) definition of violence as being 'any incident in which a person is abused, threatened or assaulted in circumstances relating to their work.' And this can include:

— Verbal abuse or threats, including face to face, online and via telephone

— Physical attacks

However, the HSE[3] recognise that they are not "the primary authority for cases of bullying, harassment or domestic abuse in the workplace" whilst acknowledging these issues can be a serious contributor to stress and mental ill health amongst workers.

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'. According to the Equality Act 2010, there are 3 types of harassment:

— Sexual harassment, which is unwanted behaviour of a sexual nature

— Harassment related to certain 'protected characteristics' as outlined in the Act

— Less favourable treatment as a result of harassment related to sex, sexual harassment or gender reassignment

Discrimination

Discrimination means treating someone 'less favourably' than someone else, for reasons associated to one or more of the following 'protected characteristics':

— Age

— Disability

— Gender reassignment

— Marriage and civil partnership

— Pregnancy and maternity

— Race

— Religion or belief

— Sex

— Sexual orientation

It's against the law to treat someone unfairly because of any of the above reason, except in a few extremely rare circumstances.

For example, if someone is turned down for a job or promotion because of their age or gender it's likely to be discrimination, and remember discrimination does not have to be an intentional decision or act.

Less favourable treatment can be anything that puts someone with a protected characteristic at a disadvantage, compared to someone who does not have that characteristic.

There's no legal definition of 'putting someone at a disadvantage'. But it might include:

— Excluding someone from opportunities or benefits

— Making it harder for someone to do their job

— Causing someone emotional distress

— Causing someone financial loss

Employers have a legal responsibility to do everything they reasonably can to protect employees from harassment, as well as a 'duty of care' to look after their wellbeing.

Managing the Risk

How to establish if bullying and harassment exists in the workplace

This can be tricky as many employees may not feel able or comfortable raising such sensitive issues, even when there is an open and supportive culture within the organisation. This could be because of simple embarrassment on the part of the recipient or fear of retaliation and victimisation after making a report.

There are a number of strategies available to elicit the information needed. These might include the results of:

— staff satisfaction surveys

— complaints and whistleblowing

— return to work interviews

— exit interviews

— employee assistance programmes (EAP's)

— employment tribunals

Obviously for the above to be effective the workers will need to feel those administering these processes are impartial / independent, will maintain confidentiality, and can be trusted. Support and commitment from the leadership group will need to be evident.

First, however, organisations will need to make sure those gathering and analysing the data thoroughly understand what bullying and harassment looks like, as it can take many forms.

What constitutes harassment and bullying?

Harassment and bullying may be against one or more people and may involve single or repeated incidents across a wide spectrum of behaviour, ranging from extreme forms of intimidation, such as physical violence, to more subtle forms such as ignoring someone. Examples include:

— Unwanted physical contact.

— Unwelcome remarks about a person's age, dress, appearance, race or marital status, jokes at personal expense, offensive language, gossip, slander, sectarian songs and letters.

— Isolation or non-cooperation and exclusion from social activities.

— Coercion for sexual favours - sexual harassment.

— Pressure to participate in political/religious groups.

— Personal intrusion from pestering, spying and stalking.

— Persistent unwarranted criticism.

— Personal insults.

Policy

As a responsibility of the employer it is essential that the expected standards of behaviour are clearly set out along with a vision of what kind of culture the organisation seeks to maintain, and the values upon which they will operate. This may emphasise the importance of:

— Setting high ethical and moral standards

— Fairness, justice and dignity

— Inclusivity, tolerance and respect

— Teamwork and valuing everyone's contribution

It is not uncommon for the issues of bullying and harassment to then be addressed in more detail in 'employee codes of conduct', 'terms and conditions of employment' and in a range of strategic guidance documents with titles such as 'dignity at work' and 'equality and diversity'.

The important thing is that any anti-bullying or harassment policies and procedures are drawn up, or reviewed and refreshed, in consultation with the workforce (or their representatives), and that they all present a consistent view that there will be a zero tolerance of any type of inappropriate behaviour. This should then be incorporated (or have a clear linkage to) disciplinary and grievance policies.

Processes and Competency

The policy then needs to be communicated and implemented by management teams, which will inevitably require some level of training and guidance at all levels.

All employees, managers, and directors should:

— Be made aware of their rights and personal responsibilities under the policy and understand the organisation's commitment to deal with harassment and bulling

— Know who they can contact if they want to discuss their experiences or seek support and guidance with deciding what steps to take next

— Know how to make a complaint and the timescales involved with any formal procedures

It's also essential that line managers understand their role in addressing all forms of inappropriate behaviour, and that they too have access to help and support with appropriate confidentiality and sensitivity.

It is important to remember that not all people can recognise their own behaviours as being bullying or harassing to others, and that they may need access to training, coaching or counselling etc.

The leaders of the organisation should demonstrate their commitment by referring to the values as part of regular business communications, so it becomes apparent that the desired behaviours are applicable to everyone and part of normal expected practice across the entire organisation.

Employers also need to be conscious of the values and attitudes of those who are appointed as leaders and managers, and perhaps consider the benefits of those applicants with great people management and influencing skills over technical ability.

If not already established, leaders will need to ensure there are sufficiently robust systems for the ongoing gathering of intelligence about levels of bullying and harassment and make sure there are effective routes for workers to report concerns and incidents.

Investigatory mechanisms with knowledgeable and empathetic personnel will be required to fully extract the truth from each case, and a clear and comprehensive grievance and disciplinary process should aid the decision making on the outcomes. It is important that employees feel that process outcomes are fair and just.

Recipients of bullying or harassing behaviour in the workplace are likely to need access to help and support after an incident and a good practice employer will be prepared for this with provisions to assist, signpost and where necessary refer those affected to competent advice.

Monitoring and Review

It is likely that in most organisations the Human Resources (HR) specialists will lead on bullying and harassment by developing and implementing the required procedures, guidance and training. It is equally likely that this same team will be responsible for coordinating any monitoring activities and reviewing and reporting on the findings to leadership.

If the welfare of the workforce is truly important to the leadership they will seek regular reports from the HR team that not only provide absence data and recruitment and retention statistics, but will also wish to gain some insight into what's happening on the ground and how the workforce perceive the values and culture of the organisation.

We know cultures don't change overnight. Therefore, as well as routine reporting it makes sense to periodically review the whole strategy for human resource management. This might involve undertaking an independent and anonymised 'staff satisfaction' survey, from which a new set of improvement objectives can be developed (with employee representatives), communicated and implemented to drive continual improvement.

Conclusions

Conclusions

Curtailing the unwanted behaviours of people remains one of the biggest challenges to organisations, but by employing an organised framework of control with well communicated value-focused policies, processes and competent leadership and management skills, organisations can continue to improve the wellbeing of its workers within a fairer and just working environment.

References

1. https://www.bbc.co.uk/news/business-65388445
2. https://www.cipd.org/uk/knowledge/evidence-reviews/evidence-bullying-and-incivility-at-work/
3. Violence and aggression at work - Overview - HSE

Useful Links

ACAS: https://www.acas.org.uk/handling-a-bullying-harassment-discrimination-complaint

Victim Support: https://www.victimsupport.org.uk/

National Bullying Helpline:
https://www.nationalbullyinghelpline.co.uk/contact.html

Further information

For access to further RMP Resources you may find helpful in reducing your organisation's cost of risk, please access the RMP Resources or RMP Articles pages on our website. To join the debate follow us on our LinkedIn page.

Get in touch

For more information, please contact your broker, RMP risk control consultant or account director.

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