

Sexual Harassment

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Agenda

- Meaning of Sexual Harassment
- Employer's defence
- Case study
- Practical tips
- Action points

Meaning of Sexual Harassment

Sexual Harassment (1)

- Where A engages in **unwanted conduct** related to a **relevant protected characteristic** which has the **purpose or effect** of either:
 - Violating B's dignity, or
 - Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- Or where A engages in **unwanted conduct** of a **sexual nature** and the conduct has the **purpose or effect** referred to above.

Meaning of Sexual Harassment

Sexual Harassment (2)

- **A or another person** engages in **unwanted conduct** of a **sexual nature** or that is related to **gender reassignment or sex**
- That conduct has the required **purpose or effect**
- Because of B's **rejection of or submission** to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct

Meaning of Sexual Harassment

- Conduct can be any unwanted verbal, non-verbal, or physical conduct of a sexual nature
- Conduct of a sexual nature can include unwelcome sexual advances, touching, sexual assault, sexual jokes, displaying pornographic pictures, sending emails with material of a sexual nature

Vicarious Liability: “In the course of employment”

- Anything done by A **in the course of A’s employment** must also be treated as also done by the employer
 - No difference whether employer knew or approved of the conduct by A
 - Must be an employment relationship between A and employer **and** conduct must have been carried out **in the course of employment**
- “In the course of employment” has a wide meaning – Tribunals will consider whether the acts were **so closely connected** with the employment that it would be just to hold the employer responsible

Avoiding vicarious liability: Employer's defence

In proceedings against A's employer (B) in respect of anything alleged to have been done by A **in the course of A's employment**, it is a defence for B to show that B took **all reasonable steps** to prevent A

-
- from doing that thing; or
- from doing anything of that description.

Employer's defence: all reasonable steps

Examples

- Having and implementing equal opportunities, anti-harassment and bullying policy and reviewing when appropriate
- Making all employees aware of the policies and their implications
- Training managers and supervisors in equal opportunities and harassment issues
- Taking steps to deal with complaints, including appropriate disciplinary action

Must have taken such steps before the act occurred

Case Study

Example

- Manager makes sexually suggestive remarks to his ex, and then gives her a poor appraisal score, because he's annoyed that she's refused to get back in a relationship with him
- She raises a grievance about harassment
- You have a quick chat with the manager – he says it was just banter, she's over-reacting

- Question:
- What do you do next?

Worst case scenario...

- You don't uphold the grievance
- Employee resigns in response to harassment and whitewashed grievance
- Employee starts Acas Early Conciliation
- Acas EC fails to reach a deal; Employee brings Employment Tribunal Claim...
- Employer exposed to considerable award for compensation, plus poor publicity, significant legal fees and management time, stress, hassle

Practical tips: Investigate the Grievance

- Engage an independent external investigator with appropriate skills and experience
- Investigator should be willing and capable of making adverse findings against the business or (senior) individuals within it.
- Consider suspending or moving the alleged harasser pending completion of the investigation

Practical tips: Investigate the Grievance

Investigator should -

- Obtain very clear factual evidence from complainant
- Indicate – pretend if you have to – that you believe complainant unless clear evidence to contrary
- Obtain witness evidence wherever possible
- Obtain any emails/texts that may be relevant
- Obtain very clear factual evidence from alleged harasser

Practical tips: Grievance Decision

- **Make a decision!**
- Investigator must decide if they believe complainant's version of events or the alleged harasser's
- Balance out all the evidence
- Which version of the truth do they prefer?

Practical tips: Deal with the Harasser

- Disciplinary hearing
- Impose appropriate sanction
 - Dismissal/warning/transfer/other sanction provided for in Handbook

Practical tips: Prevention is better than cure

Put in place, implement and regularly review robust policies and procedures on:

- Anti-harassment and bullying
- Equal opportunities
- Social media, email and internet use
- Rules/boundaries for work events
- Personal relationships at work
- Grievances
- Disciplinary – including a wide choice of sanctions

Practical tips: Prevention is better than cure

- Train managers on:
 - your policies
 - what constitutes harassment/sexual harassment
 - how to deal with inappropriate behaviour

Action points

- Aim to create and facilitate a working environment and ethos that is a community, respectful of the boundaries – wherever they lie in your business
- Put documents in place supporting that ethos
- Keep your eyes open
- Deal promptly with issues

Thank you

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