

## OVERVIEW

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## FAQS

### **A** Bullying defined

#### 1. What is bullying?

There is no statutory definition of bullying. However, in general terms, bullying is conduct which involves offensive, unkind or abusive behaviour which makes another person feel upset, humiliated, or intimidated.

A definition used in Acas guidance suggests that bullying is "offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient."

Bullying can also be harassment if it is related to a protected characteristic.

### **B** Harassment defined

#### 1. What is harassment?

Harassment is defined in the Equality Act 2010 as: "unwanted conduct related to a protected characteristic that has the purpose or effect of violating the victim's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the victim".

Protected characteristics for this purpose are:

- age,
- disability,
- gender reassignment,
- race,
- religion or belief,
- sex, and
- sexual orientation.

Note that pregnancy/maternity and marriage/civil partnership are not protected characteristics in the context of harassment.

Harassment can be associative and can also be based on perception (see below). A single act can amount to harassment.

The conduct must be unwanted.

If the purpose of the conduct is to violate the victim's dignity or create an intimidating etc. environment, then the perpetrator may be liable even if the behaviour did not have that effect. However, if the conduct has that damaging effect, even if it was not intended by the perpetrator, it will still be harassment if it is reasonable for the conduct to have that effect, taking the victim's perception into account.

## **C** Employee rights

### 1. Can an individual who has been bullied bring a claim for bullying in the tribunal?

**Not as such.** There is no right to bring a statutory claim for bullying (in contrast to harassment, which is considered below). However, an individual who is bullied at work may bring one or more of the following claims against the employer:

- constructive unfair and/or wrongful dismissal;
- a discrimination claim, if the conduct also amounts to harassment;
- a claim under the Protection from Harassment Act 1997 (if there has been a course of conduct which amounts to harassment);
- a personal injury claim if the employee has suffered a psychiatric injury as a result of the bullying (a stress claim).

### 2. Can an individual who has been harassed bring a claim in the tribunal?

**Yes.** Harassment is a type of discrimination under the Equality Act 2010. If an individual has suffered harassment, they can bring a claim in the employment tribunal.

## **D** Common bullying and harassment issues

### 1. Can an employee be bullied by a junior colleague?

**Yes.** Bullying conduct can be directed upwards as well as downwards.

### 2. If a manager is managing an employee who is underperforming, can this be bullying?

**It depends.** Normal performance management is not bullying. However, if the manager oversteps the mark and deals with the process in a heavy-handed manner, it could be. For example, making belittling comments or criticising the employee in front of colleagues could be bullying.

3. An employee displays pictures of semi-naked women on a notice board above his desk. Another employee complains that she finds this offensive. The perpetrator says that it was not aimed at his colleague and that she does not have to look at the pictures. Can this be harassment?

**Yes.** An incident can be harassment if the effect is to create a humiliating etc. environment for the individual, even if this was not the purpose. So even though the employee did not intend to offend his colleague, this can still be harassment. Where the conduct has the effect of harassing someone but that was not the intention, it is relevant whether the individual was reasonable in being offended by that conduct. However, it is unlikely that an individual complaining about explicit photographs in the workplace would be found to be overly sensitive.

4. An employee gives a colleague a birthday card which makes a joke about getting older. The employee is offended and makes a complaint. Can this be harassment?

**Potentially, yes.** Again, assuming there was no intention to harass, whether or not the card had the effect of violating the employee's dignity etc. becomes relevant. While simply sending a birthday card can seem benign, the recipient may be behaving reasonably in feeling offended by the message in the card.

5. Can an employer be liable for the harassment and/or bullying of one employee by another, if this takes place outside of the workplace?

**Yes.** An employer can be vicariously liable for the actions of an employee outside of the workplace if the act is carried out "in the course of their employment." This issue often arises in the context of an after-work social function.

6. An employee is offended by comments made about disabled people. Can this be harassment even if the employee is not themselves disabled?

**Yes.** This would be an example of associative harassment. It is not necessary for the victim to share the protected characteristic in question in order to be harassed in relation to it.

7. An employee complains that they are being ostracised by their colleagues because they are the only non-white employee in the team. Can this be bullying, harassment or both?

Being isolated or ignored by a group of people is likely to be a form of bullying. If the treatment is because the employee in question is of a different racial group from the perpetrators, this can also be racial harassment.

8. An employee raises a grievance about their manager. The employee says that they are being treated differently from their colleagues. What factors are relevant in considering whether the grievance is valid?

It can sometimes be difficult to draw the line between appropriate management and bullying. However, this could be bullying if the treatment of the employee differs from that given to co-workers and cannot be explained. Some examples of this suggested by Acas include:

- setting someone up to fail, for example by setting unachievable goals or targets;
- criticising a team member in front of colleagues;
- overlooking someone for promotion or advancement.

If any of these factors are relevant, this warrants further investigation. Likewise, if there are personal issues between the manager and team member, this should also be investigated.

### Getting in touch

When you need a practical legal solution for your next business opportunity or challenge, please get in touch.

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