

HANDLE A COMPLAINT OF SEXUAL HARASSMENT IN THE WORKPLACE

Following the #MeToo movement, it is important that employers' adopt a proactive and robust approach to dealing with sexual harassment in the workplace.

This "How To" guide sets out the key legal and practical issues for businesses to be aware of.

WHAT IS SEXUAL HARASSMENT?

Under the Equality Act 2010 sexual harassment occurs where someone engages in unwanted conduct of a sexual nature, which has the purpose or effect of violating another's dignity or creating an unpleasant environment.

Examples include:

- unwelcome touching,
- continued requests for dates,
- leering and suggestive gestures,
- sexually explicit jokes.

It would also be harassment for someone to engage in unwanted conduct of a sexual nature which has the above purpose or effect and because of another person's rejection or acceptance of that conduct that person is then treated less favourably than they would have been had they not rejected or accepted the conduct. An example would be obstructing someone's promotion or training opportunities for rejecting unwelcome sexual advances.

EMPLOYER'S LIABILITY

Under the Equality Act 2010, any actions by an employee during the course of their employment will be deemed as acts of the employer, irrespective of whether the employer is aware of such acts.

The employer will therefore be vicariously liable for the acts of its employee which amount to sexual harassment in the workplace. Employees may also be liable in their personal capacity for such acts that they commit.

Although any conduct must be made during the course of employment for the employer to be liable, this can extend to social work-related events outside of the workplace and non-working hours (for example, at work Christmas parties or other social gatherings). In certain circumstances, unlawful sexual harassment may extend to non-related work environments if the harassment affects the working environment.

Where an employer can demonstrate that it took reasonable steps (see examples below) to prevent employees from sexually harassing their colleagues, the employer can use this to defend against such claims.

HOW TO HANDLE A COMPLAINT

The Employer should ensure that it:

- listens carefully to an employee's complaint and refers this to the designated colleague trained to deal with such a complaint;
- follows the relevant policies and processes that it has in place for dealing with such complaints and adheres to ACAS guidance;
- assesses whether the complaint warrants an informal discussion or a formal investigation to resolve it;
- considers whether the accused should be suspended as a precaution during the investigation, so as to protect the complainant and avoid any interference with the investigation;
- makes clear the **disciplinary action** that it may take where a complaint is upheld (including summary dismissal for gross misconduct) and this reflects what is stated in its policies;
- adequately protects the **confidentiality** of its employees involved in the allegations;
- properly investigates the allegations **fairly** and **promptly** pursuant to company policies;
- considers whether any informal **support** is necessary for the complainant (e.g. counselling)
- provides **guarantees** that the complainant will not be disadvantaged for raising the complaint;
- considers appropriate **adjustments** to facilitate the complainant's participation in the disciplinary process (e.g. permitting a family member to attend investigation meetings for support);
- takes suitable and proportionate **disciplinary action** against the accused (including summary dismissal if the accused's act is deemed to constitute gross misconduct);
- considers any practical steps that could **reduce** the likelihood of any such occurrences in the future; and
- where a criminal offence may have been committed, considers whether it is under an obligation to report the complaint to the **police**.

ACAS guidance recognises that a complaint can also be distressing for the accused and employers should offer support to the accused, without impeding the fairness of the process. Therefore employers should steer clear of any actions that could give the impression of bias or unfairness.

EMPLOYER CHECKLIST

To help minimise the risks of such claims arising, the employer should ensure that:

- it **educates** its employees on what may constitute sexual harassment;
- it proactively **promotes** an environment where reporting such incidents is encouraged;
- there are suitable anti-harassment and bullying **policies** in place;
- employees are familiar with these policies and have completed any **relevant training** (e.g. inclusion and equal opportunities training);
- it provides **appropriate procedures** (e.g. whistleblowing and grievances) for employees to report unacceptable behaviour;
- anyone responsible for dealing with such complaints receives specialist **training**;
- complaints are dealt with **fairly** and **promptly**; and
- there is an informal resolution **option** for serious complaints (e.g. not requiring a complainant to put their verbal complaint in writing).

OUR EMPLOYMENT TEAM CAN HELP YOU WITH:

- Drafting company policies relating to anti-harassment and bullying
- Providing training to an employer's staff in respect of sexual harassment, inclusion and equal opportunities
- Advising the employer in respect of complaints raised
- Negotiating any settlements on behalf of the employer

For any further information please contact howto@shoosmiths.co.uk

Disclaimer: This document is for informational purposes only and does not constitute legal advice. It is recommended that specific professional advice is sought before acting on any of the information given.