

New Code of Practice provides protections against Bullying

Like all other sectors in, the not-for-profit sector is as vulnerable to claims of bullying and harassment. While many would hope that they never have to deal with an issue relating to bullying, it is unfortunately an issue that some are faced with all too often.

Bullying and harassment in the workplace can have negative effects on everyone involved. For those who are the victim of bullying, effects include stress, physical and mental ill health, low morale, reduced performance and lower productivity. In some instances, the person impacted may feel like they have no other option but to leave their job, which could lead to legal issues for the employer including constructive dismissal and potential personal injury claims.

For organisations and people managers, bullying can lead to reputational damage, absenteeism, reduced productivity, increased costs, poor morale, loss of respect for supervisors and a big drain on HR and management resources.

Employer requirements

While the legislative safeguards of the Employment Equality Acts 1998 – 2015, require employers to prevent harassment in the workplace and the Safety, Health and Welfare at Work Act 2005, compels employers to “prevent any improper conduct or behaviour likely to put the safety, health and welfare of employees at risk”, one of the difficulties in any bullying claim is understanding if it falls under the definition of bullying. It is important to note that in order to be defined as bullying, the inappropriate behaviour must be repeated and not just a one-off issue.

New Codes of Practice on Bullying in the Workplace

In order to provide some guidance for both employers and employees, a much-anticipated review of the Workplace Relations Commission (WRC) 2002 and the Health and Safety Authority (HSA) 2007 Codes of Practice on Bullying in the Workplace was completed late last year.

In December, a single joint Code of Practice, The Industrial Relations Act 1990 (Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work) Order 2020 was published, which provides a positive addition to the protections for employers and employees from unwanted behaviour.

The new Code provides useful signposting for employers regarding appropriate procedures and processes when a complaint of bullying is lodged. A welcome feature of the 2020 Code on Bullying at Work is the inclusion of a definition of bullying together with a list of examples of bullying behaviour along with examples of behaviours that will not be considered bullying.

No doubt many employers and people managers will welcome the provision in the Code that “objective criticism and corrections that are intended to provide constructive feedback to an employee are not usually considered bullying, but rather are intended to assist the employee with their work”.

Other listed exclusions from bullying type behaviour includes:

- Expressing differences of opinion strongly.
- Offering constructive feedback, guidance, or advice about work-related behaviour which is not of itself welcome.
- Ordinary performance management.
- Reasonable corrective action taken by an employer or supervisor relating to the management and direction of employees (for example managing a worker's performance, taking reasonable disciplinary actions, or assigning work).
- Workplace conflict where people disagree or disregard the others' point of view.

The new Code also includes some other important provisions, such as the requirement that employers must act reasonably to prevent workplace bullying patterns forming and where a complaint is made, they must respond reasonably, assess the complaint, record the actions taken and initiate a suitable response on a case-by-case basis.

In accordance with the requirements of the Health, Safety and Welfare at Work Act of 2005, employers have to assess the risk of bullying and where necessary, preventative measures should be recorded in the organisation's Safety Statement.

Employers must develop a proper workplace anti-bullying policy, in consultation with employees, to ensure a system is in place for dealing with complaints and that disciplinary action may follow where bullying is found to have occurred. Prior consultation with employees on health and safety matters is required under the Act; accordingly, there may be a need to consult with employee representatives, Safety Representatives and the Safety committee regarding the Anti-Bullying policy and its implementation. Where staff handbooks are in use, they should include the organisations Anti-Bullying policy.

Other useful considerations for employers prompted by the 2020 Code include:

- The benefits for an organisation in having a "Contact Person"; someone who acts in a confidential, supportive capacity for the victim, who offers guidance on the various options in line with the organisations' policies and procedures, but who is not involved in the investigation of the complaint. This would require training for the Contact Person.
- Consideration of the merit of using suitably qualified internal or external mediators when seeking to resolve issues at any early stage.
- Ongoing training on Bullying and policy awareness for all employees but particularly for persons who will be involved in facilitating the complaints process.

Conclusion & Next Steps

In light of the new Code, it is recommended that employers revisit their health and safety statements and review current policies and procedures to ensure they are in line with what has been proposed. Employers should ensure they have appropriate supports in place as well, such as Employee Assistance Programmes.

Adequate training for people managers is also crucial to effectively manage complaints of bullying and clearly communicating what is and isn't acceptable behaviour is also important.

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