

EMPLOYMENT EQUALITY

The Employment Equality Acts 1998 & 2004, the Pensions Act 1990 and the Unfair Dismissals Acts 1977-2007, make provision for equality in relation to pay, conditions of employment, recruitment, opportunities for promotion and training, etc.

The Employment Equality Acts 1998 & 2004 make provision for the promotion of equality and deals with issues of discrimination in the workplace. For the purposes of the Employment Equality Acts, discrimination occurs where one-person is/has been or would be treated less favourably than another on any of the following grounds.

- **Gender** – whether male or female
- **Marital status** - Marital status is defined as persons who are single, married, separated, divorced and widowed.
- **Family status** – includes those who have/have not a family status. It also includes individuals who are defined as having a responsibility i.e.- of someone who has not reached the age of 18 years or a carer in relation to a person of or over that age with a disability needing frequent care and support of that person.
- **Sexual orientation** – whether same or of different orientation
- **Religious beliefs** – whether of same, different or none. Includes religious background or outlook.
- **Age** – This applies to all ages above the maximum age at which a person is statutorily obliged to attend school. There are a number of exceptions however, including;
 - Whereby it can be shown/proven that significant increase in costs would result if the discrimination were not permitted in those circumstances
 - It is not discrimination to set different ages for the retirement (voluntarily or compulsorily) of employees
 - A maximum age can be established for recruitment which takes into account that any cost or period of time involved in training the recruited individual to a standard at which the recruit will be effective in that job. It may also demonstrate that there is a need for there to be a reasonable amount of time prior to retirement age for the recruit to be effective in that job.

- **Disability** – includes total or partial absence of bodily or mental function, including absences of a part of a person’s body. The presence in the body of organisms causing, or likely to cause, chronic disease or illness. The malfunction which results in learning difficulty. Or a condition, illness or disease, which affects a person’s thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour.

It also includes disability which exists at present, or which previously existed but no longer exists or may in the future.

Note: a person who has a disability will be seen as fully competent to undertake any duties, if with the assistance of special treatment or facilities they can undertake the task. An employer must do all that is reasonable to accommodate the needs of a disabled person, through the provision of special treatment/facilities.

However a refusal or failure to provide for special treatment or facilities will not be reasonable if it would give rise to a cost other than nominal cost to the employer.

The Act also provides that discrimination based on disability will not be seen as unlawful where it is shown and proven that *significantly increased costs* would result if the discrimination were not permitted in such circumstances.

- **Race** - includes individuals of different race, colour, nationality or ethnic or national origins.
- **Membership of the Traveller community** - it is unlawful to discriminate against those who are or are not a member of the travelling community.

Pay Related Discrimination

- Gender based discrimination – Both male and female employees are entitled to the same pay where they are doing “like work”.
- Male and Female employees are entitled to the same remuneration for “like work” regardless of age, sexual orientation, etc.
- An employee has a right to receive the same rate of remuneration as another person employed on **like work** by the same employer or an associated employer (comparator) in the same place. Like work is regarded as:
 1. where both perform the same work under the same or similar conditions, or where each is in every respect interchangeable with the other in relation to that work; or
 2. where the work performed by one is of a similar nature to that performed by the other and any differences between the work performed or the conditions under which it is performed by each occur only infrequently or are of small importance in relation to the work as a whole; or

3. Where the work performed by one is equal in value to that performed by the other in terms of the demands it makes in relation to such matters as skill, physical or mental effort, responsibility and working conditions.

Work of equal value

The purpose of work of equal value is to allow jobs which are radically different in content to be demonstrated that the work performed by the claimants and the comparators are equally demanding.

This covers a weighing of varying factors e.g. the amount of skill, physical or mental effort, responsibility and the quality of working conditions. Should any of these be of a higher value, employers will then be able to successfully differentiate on pay to individual employees.

Gender based discrimination - this is not unlawful where an employer proves that the difference is genuinely based on grounds other than the gender ground. The onus of proof lies with the employer.

Note - Discrimination is allowed if the reason is an occupational qualification, such as:-

- The performance of duties outside the state in a place where the laws or customs are such that those duties could not reasonably be performed by a person of that sex.
- Special beneficial treatment of women connected with pregnancy, maternity or adoption.
- Where the duties of the post involve personal services and it is necessary to have persons of both sexes engaged in such duties.
- Where because of the nature of the employment it is necessary to provide sleeping and sanitary accommodation for employees on a communal basis and it would be unreasonable to expect the provision of separate accommodation of that nature or it is impracticable for an employer to provide it.

Discrimination in Specific Areas

Discrimination is prohibited in relation to:

- Access to employment.
- Conditions of employment. Terms of employment (other than pay unless there is like work), working conditions, overtime, shift work, short time, transfers, layoffs, redundancies, dismissals and disciplinary measures.
- Training or experience for or in relation to employment.
- Promotion or re-grading, or
- Classification of posts.

Advertising

Employers should not display an employment advertisement whether public or not, which may contravene with the act and avoid advertisements which:

- Indicates an intention to discriminate

- Could be understood as indicating such an intention.

Both the company and the agency/publisher presenting the advertisement are governed by the Act.

Employers should ensure that advertisements carry a statement that the company is an *Equal Opportunities Employer*.

See section 1 on 'Recruitment'.

Harassment in the Workplace

The Employment Equality Acts 1998 & 2004 protects against harassment/sexual harassment in the workplace. The employer has a duty to provide an environment free of harassment (sexual or otherwise) as part of the conditions of employment. The employer may also be liable if they were aware of harassment, or should have been reasonably aware that it was taking place – and failed to take action. This can lead to the employer and not the perpetrator being held liable.

Employees are also liable for acts of their agents where such acts are done with the authority of the employer. However, it is a good defence for the employer to show that the employer took reasonable steps to prevent employees from doing the particular act complained of or from doing acts of that particular description in the course of their employment

Sexual harassment is not limited to the incorrect behaviour of one employee to another. It also includes- customers, clients and business contacts of the employer. A sexual harassment free environment extends throughout the work place but the action may occur in a car, a street, a hotel, seminars, etc. The amount of control that the employer has in particular circumstances would be a relevant factor.

Sexual Harassment is:

- Any act of physical intimacy
- An express request for sexual favours
- And any other act or conduct including – gesture, display or circulation of written words, pictures or other material which is unwelcome

Employers must ensure that they have taken reasonable practicable steps to prevent the above.

Equality Authority

The Employment Equality Act 1998 established the “Equality Authority” (this body was previously known as the Employment Equality Agency).

This body works towards the elimination of discrimination, in relation to employment, by promoting the equality of opportunity, provision of information, reviewing legislation and conducting enquires.

The Authority is also given the power to conduct inquiries for any purpose connected with its functions and to serve a non-discrimination notice on employers who are in

breach of the terms of the Act requiring them to refrain from breaching the Act. The purpose of such a notice is to outline what steps the employer should take in order to discontinue the discrimination. Failure to comply with a non-discrimination notice is an offence.

Redress

Where discrimination is found to exist, the statutory remedies include the following:

1. In equal pay cases, equal pay and arrears for a maximum of 3 years;
2. In all other cases, equal treatment and compensation of up to 2 years' pay.
3. In the case of non-employees - €12,700
4. In the case of dismissal – in addition to the above remedies, redress will also be reinstatement and re-engagement.

Similar remedies are available in gender cases in the Circuit Court save that where the Circuit Court orders compensation it is not limited to its usual maximum of €30,000.

Vicarious Liability

Vicarious liability is where the law holds one person liable for the wrongs committed by another person even though the person held liable is not at fault in the accepted sense of the word. The employer is not liable for all the wrongs committed by his employee, but only for those, which arise out of or are within the scope of his employment. Liability thus arising is called vicarious liability because it arises indirectly.

Equal Status Acts 2000 and 2004.

In line with the Equal Status Acts 2000 and 2004 Employers are now liable for discriminatory acts of an employee in the course of his or her employment, unless they can prove that they took reasonably practicable steps to prevent the conduct. It is therefore extremely important that relevant policies are introduced and that all employees are aware of their obligations under these policies.

HARASSMENT AND BULLYING IN THE WORKPLACE

The Employment Equality Acts 1998 and 2004 set out the definitions of harassment and sexual harassment, and provide that in certain circumstances, where harassment or sexual harassment occurs in the workplace, that this may constitute discrimination by the employer in relation to the victim's terms and conditions of employment.

Definition of Harassment

Harassment is defined as *any form of unwanted conduct related to any of the discriminatory grounds, being conduct which has the purpose or effect of violating a person's dignity and creating an intimidating hostile, degrading, humiliating or offensive environment for the person.*

Definition of Sexual Harassment

Sexual Harassment is defined as *any form of unwanted verbal, non-verbal or physical conduct of a sexual nature being conduct which has the purpose or effect of violating a person's dignity and creating an intimidating hostile, degrading, humiliating or offensive environment for the person.*

Different Forms of Unwanted Conduct Constituting Harassment and Sexual Harassment

The legislation sets out that the unwanted conduct referred to in both definitions may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

Discrimination by the Employer

Where an employee, or self employed contractor, is harassed or sexually harassed in the workplace, or otherwise in the course of his or her employment, and that harassment or sexual harassment is perpetrated by either;

- another person employed at that place, or by the same employer; or
- the victim's employer; or
- a client, customer or other business contact of the victim's employer, and the circumstances of the harassment are such that the employer ought reasonably to have taken steps to prevent its occurrence,

then that harassment or sexual harassment shall constitute discrimination by the victim's employer in relation to the victim's terms and conditions of employment.

Where such harassment has occurred and either the victim is treated differently in the workplace or otherwise in the course of his or her employment by reason of accepting or rejecting the harassment, or it could be reasonably anticipated that he or she would be so treated, then that harassment or sexual harassment shall constitute discrimination by the victim's employer in relation to the victim's terms and conditions of employment.

Note: Employee, for the purposes of the Acts, also refers to self employed contractors and partners in a partnership.

Bullying in the Workplace

Bullying is a form of harassment. Like harassment, bullying may have many motivations - race, colour, gender, religion, sexual orientation, disability. In order to be protected by the Employment Equality Acts 1998 and 2004, the bullying must be based on one of the grounds protected under the Acts. Bullying is best understood as a direct and systematic attempt either by means of physical or psychological behaviour to undermine an employee's sense of value of his/her employment.

Definition

Bullying in the workplace is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work.

An isolated incident of the behaviour described in this definition may be an affront to dignity at work but as a once off incident is not considered to be bullying.

(Task Force Report, Government Publications, April 2001)

The Health and Safety Authority is the central coordinating state agency handling bullying at work. Bullying is considered a workplace hazard alongside more traditional hazards and as such, must be treated within the Safety Management System. Bullying must be identified as a hazard and a risk assessment carried out to eliminate or reduce the risk of its consequences should it occur.

All employers have a responsibility, as far as is reasonably practical, to provide a workplace where accident, disease and impairment of physical and mental health are prevented. The Safety, Health and Welfare at Work Acts 1989 states that the employer's duty includes in particular the provision of systems of work that are planned, organised, performed and maintained so as to be, as far as is reasonably practicable, safe and without risk to health.

Where a bullying culture has been identified, employers must take reasonable measures to prevent incidents of bullying occurring and also when and if they do occur, prevent the risk of injury to the health of employees worsening by providing and implementing transparent and just anti-bullying policies and procedures.

Employees have a responsibility to ensure that they are not contributing to a bullying culture and it is the duty of every employee to take reasonable care for his own safety, health and welfare and that of any other person who may be affected by his acts or omissions while at work.

Managers and supervisors have a particular responsibility to promote dignity in the workplace for all. They should be alert to the possibility of bullying behaviour and be familiar with the policies and procedures for dealing with allegations of bullying, as bullying has been identified as a workplace hazard.

Examples of some forms of bullying, intimidation, harassment

- Any aggressive behaviour by a Manager, Colleague, Employee.
- Any repeated verbal harassment.
- Any physical harassment.
- Any personal insults and name calling.
- Persistent criticism.
- Persistent “picking” on a person for the butt of a joke, horseplay, uncomplimentary remarks or other behaviour likely to cause offence.
- The maligning or ridiculing of a person directly to others by rumour, gossip, ridicule and / or innuendo.
- Unfair delegation of duties and responsibilities.
- Intimidation and threats in general.
- Social exclusion or isolation.
- Manipulating the nature of the work or the ability of the victim to perform the work, for example by withholding information or setting meaningless tasks.

Examples of Sexual Harassment

- Any unwelcome verbal advance.
- Any unwanted pressure for social contact.
- Sexually derogatory statements.
- The display of sexually suggestive or degrading objects, pictures or calendars in the workplace.
- Sexually discriminatory remarks, or innuendo, or jokes made by someone that is offensive or objectionable to the recipient, or which causes the recipient discomfort, humiliation, or which interferes with their job performance.
- Any unwelcome physical advance, which includes:
 - Unnecessary touching, groping, pinching, patting, fondling, or kissing.
- Sexually aggressive or derogatory remarks.
- Leering at a person’s body.
- Compromising invitations.
- Unwelcome sexual advances.
- Demands for sexual favours.
- Sexual assault or rape (where civil/criminal proceedings may also be appropriate).

It is the unwanted and unwelcome nature of sexual harassment, which distinguishes it from behaviour which is welcome and reciprocal. A single incident of sufficiently outrageous behaviour will suffice – it does not necessarily have to be repeated. It should also be noted that it is the impact of the conduct on the recipient and not the intent of the perpetrator that determines whether the behaviour is acceptable.

Outside the workforce

Bullying, intimidation, harassment and sexual harassment may occur outside the workplace e.g. at a Company Meeting, or Christmas Party, whilst attending a conference on behalf of the Company. The employer may have a vicarious liability or responsibility for such actions if they occur and the degree of control available to the Employer in the particular circumstances would be a relevant factor.

Disciplinary Action

On receipt of a formal complaint a full investigation should be conducted and it may be necessary to initiate disciplinary action against a perpetrator. Disciplinary action may involve dismissal, suspension, or relocation of the bully / harasser together with an apology from the harasser for his/her conduct to the complainant – if the complainant so wishes. The complainant will not be relocated except at this/her own request. Records should be held as per the Company Disciplinary procedure.

Details of any action taken should be entered on the harasser's Personnel File and appropriate records of the complaint and the resolution of the same will be maintained. Disciplinary action should also be taken against any person found to be victimising or otherwise bullying or harassing a complainant or a witness to harassment, with appropriate records placed on the that person's Personnel File. **For further information see Sample policy on page 11 in this section)**

Policy Statements for Harassment & Bullying

Organisations should commit themselves to working together to maintain a workplace environment that encourages and supports dignity at work. Harassment or/and Bullying in any form should not be accepted or tolerated. In order to do this, the employer should make it clear, in policy statements and in the operation of these policies, in written form and in appropriate and timely action taken, that he or she is intolerant of workplace bullying and intolerant to behaviour which infringes an individual's right to dignity at work.

- One of the first steps in the prevention of workplace harassment/bullying is the drawing up of a written policy. The policy should be drawn up in consultation with staff representatives, unions or others, as appropriate. It should state the management and staff commitment to dignity in the workplace. It should clearly outline what harassment/bullying is and the step by step procedure for making an informal or formal complaint.
- The policy should be publicised, made visible and all individuals whether permanent or temporary should receive a copy. Organisations should raise awareness of the issue by inclusion in staff bulletins, training, at recruitment stage and using any other appropriate method.
- Allegations of harassment/bullying should be investigated, fairly and thoroughly without reprisals for the complainant. Complaints should be dealt with in a confidential manner and as speedily as possible. Natural justice applies and accused persons are presumed innocent until, and if, proven guilty.

The objective of this process is to create and maintain a positive work environment where the right of each individual to dignity at work is recognised and protected. **Further details are included in sample harassment & bullying policies on page 11 in this section.**

Defence

If bullying, harassment or sexual harassment is perpetrated by a person other than the employer, it shall be the defence for the employer to prove that the employer took such steps as are reasonably practicable to:

- prevent the person from harassing or sexually harassing the victim, or any class of persons including the victim; and/or
- prevent the victim from being treated differently in the workplace or otherwise in the course of employment, and to reverse the effects of any such treatment where it has occurred.

A person's rejection of or submission to bullying, harassment or sexual harassment may not be used as a basis for any decision affecting that person.

SAMPLE POLICY ON HARASSMENT AND BULLYING

COMPANY NAME

Harassment and Bullying In The Workplace

The Company will make every effort to ensure that its work environment gives all staff the freedom to do their work without having to suffer harassment or bullying from any source. All employees should be aware that harassment or bullying is unacceptable behaviour and is in breach of Company policy.

Present day changes of attitude mean that behaviour once tolerated by colleagues is no longer acceptable. Behaviour that is acceptable to one person may not be acceptable to another. If the behaviour is unwelcome and unacceptable, then it is a problem. Whether the harasser intended it to be offensive is not the point. If the behaviour is unwelcome it is harassment. The Company will not tolerate harassment of employees from employees, nor at any level in the organisation or third parties.

Under this policy harassment includes:

- Harassment on grounds of gender
- Harassment on grounds of sexual orientation
- Harassment on grounds of disability
- Harassment on grounds Race/Ethnic Origin
- Harassment on grounds of religion
- Harassment on grounds of Age/Marital status/ family Status/ Member of the travelling community.
- General Harassment or Bullying

Definitions:

Sexual Harassment is defined as unwanted conduct based on a person's gender which is offensive to the recipient, and which might threaten a person's job security or create a stressful, hostile or intimidating work environment. While it is generally regarded that sexual harassment is an offence committed by men against women, the evidence of recent years shows that men are also victims of this form of maltreatment.

Sexual Harassment takes various forms, for example:

Verbal – jokes, innuendo, requests for sexual favours, persisting in attempts to continue a relationship against the wishes of the other person.

Visual – display of or sending offensive pictures, slogans

Physical – unwanted physical contact, from “groping” to rape.

Harassment on grounds of sexual orientation may take several forms, from jokes and innuendo to serious physical assault and may include a person's perceived rather than actual sexual orientation.

Harassment may include:

Verbal harassment – offensive jokes about a person's race or ethnic origin (which may include membership of the travelling community), or their country of origin.

Visual Harassment – display of material offensive to a particular racial or ethnic group, such as cartoons, racial propaganda material etc.

Physical Harassment – physical assault.

Bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but as a once off incident is not considered to be bullying.

The following are some examples of bullying behaviour:

- Personal insults or name-calling.
- Public or private humiliation.
- Shouting at staff in public and/or private.
- Aggression, sneering, sarcasm.
- Persistently undermining an individual's job performance.
- Constantly changing working guidelines.
- Making it difficult for staff to have access to general information, e.g. staff vacancy notices or staff information notices.
- Continually refusing reasonable requests for Annual Leave without good reason.
- Ignoring and isolating people on purpose and excluding them from discussions
- Intimidation and threats in general.

Effects of Harassment

Harassment can:

- Cause distress and affect the employee's confidence and self-esteem.
- Affect the recipient's job performance.
- Create an upsetting and stressful work environment.
- Decrease staff morale.
- Undermine the recipient's job security.
- Affect productivity levels.

Location

Harassment can take place:

- In the workplace.
- At functions such as Christmas parties or sports functions taking place under the aegis of the Company.
- Any other place where employees are present on Company business, such as training courses, business meetings away from the Company's workplace, overnights away from base, etc.

Harassment by outsiders

Harassment by Company personnel by person's not employed by the Company, such as repair persons, customers, clients, etc, is unacceptable and should be promptly reported to one of the contact people listed at the end of this section. Although the Company has no power to discipline the offenders in such cases, upon receipt of a complaint and after investigation, it will take action in the effort to prevent the recurrence of such conduct.

Undertaking by Management

Any complaint involving harassment will be immediately, seriously and sympathetically investigated. It is recognised that harassment, especially sexual harassment, is very difficult for all concerned to deal with. Where a complaint has been substantiated, the victim will be protected and will not be required to move unless they wish to do so. Victims shall be protected from intimidation, **victimisation**, or discrimination for filing a complaint under this policy. Employees assisting in an investigation will also be protected. All staff will be provided with a copy of this policy.

Responsibilities

Employees: In addition in securing their own behaviour does not cause problems, all employees have an important role in creating an environment where sexual harassment or bullying is unacceptable. They should make clear to others they find such behaviour unacceptable and support colleagues suffering such treatment.

Supervisors: In addition to securing their own behaviour does not cause problems, supervisors are responsible for preventing incidents of sexual harassment or bullying and must ensure that all staff members adhere to Company policy. Supervisors who become aware of incidents of sexual harassment are required to immediately advise their Manager.

Management: In addition to ensuring their own behaviour does not cause problems, Management should:

- Know the Company policy.
- Communicate the policy as necessary.
- Endeavour to maintain a harassment-free work environment.

- Immediately inform one of the contact people if a complaint is received.

Malicious Complaints

Malicious complaints will be treated seriously and may result in disciplinary action. In this regard it should be noted that where a complaint is not upheld, this does not necessarily indicate that the complaint was malicious.

Complaints Procedure

If you believe you are being harassed or bullied you should consider carefully if that is the case. If so you should raise the problem with the alleged perpetrator, point out that their behaviour is unacceptable and ask that it stop.

If the harassment/bullying does not cease or if you find it difficult or if you find it difficult or embarrassing to confront the alleged perpetrator, you may seek advice from one of the contact people listed at the end of this section, from your Trade Union representative, or from a Senior Manager. It would be useful to keep a record of incidents, dates and witnesses, if any.

If you proceed with the complaint, you may contact one of the contact people for assistance who, depending on the nature of the complaint, will try to find a solution acceptable to both parties.

Complaints will be handled speedily and in a confidential manner. They will be treated seriously and sympathetically.

It is a requirement that all individuals involved maintain confidentiality on the subject.

All concerned are guaranteed a fair and impartial hearing.

If a problem is not resolved under the above Complaints Procedure, the Formal Procedure outlined below will apply.

Formal Procedures for Handling Complaints

For serious complaints, individual preference or where the problem is not resolved under the procedures outlined above, the following Formal Procedure will apply:

- The person making the complaint will be required to put the complaint in writing.
- The alleged harasser will be given a copy of the written complaint and given three days to respond in writing.
- A formal investigation will be carried out by the investigators from the panel listed below, not including the person who was trying to resolve the problem

informally. In view of the complex and sensitive nature of cases, the investigator may also enlist the assistance of outside experts in the field concerned.

- It is a requirement that all parties involved maintain confidentiality.
- Both the complainant and the person complained against may have representation at the hearings if they so wish.
- The investigation will be carried out speedily, within a four-week period if circumstances allow.
- Both parties will be notified in writing of the outcome of the investigation.

Outcome

1) Should management decide that the complaint is well founded; the alleged perpetrator(s) should be given a formal interview to determine an appropriate course of action. Such action could, for example, involve counselling and / or monitoring or progressing the issue through the disciplinary and grievance procedure.

2) If either party is unhappy with the outcome of the investigation, the issue may be referred to the Rights' Commissioner Service.

Policy Review

This policy will be reviewed from time to time.

Contact People

You should contact the following people if you wish to discuss any incidents with regard to this policy _____.

I have read and understand the contents of this policy:

Signed (Employee):_____

Date:_____

Signed (Employer):_____

Date:_____

