



Human Resources & Health and Safety



Do you employ staff?

Sexual Harassment in the Workplace

2017 and Beyond

The “hot topic” of 2017 was most definitely sexual harassment and the issues of inequality between men and women in the workplace. The complaints of sexual harassment in Hollywood were widespread and this caused many people to start tweet #metoo. Sexual harassment has always been a taboo issue, but it has also been an issue that can be ignored or swept under the carpet with “it’s only a bit of banter” type excuses. The increase of sexual harassment complaints has empowered people to share their own experiences and speak up about what they will or won’t tolerate. The trend has continued into 2018 with Oprah Winfrey speaking at the Golden Globes, informing the world that “Time’s Up” and that inequality and exploitation will not be tolerated anymore. With all of this in mind, and with consideration to February containing “Sexual Abuse and Sexual Violence Awareness Week” it seemed appropriate to write a newsletter on Sexual Harassment in the workplace. Since the elimination of Employment Tribunal Fees, it is especially important that employers are aware of how to manage claims of sexual harassment within their workplaces.

Definitions and Statistics

What is sexual harassment? Many people find it difficult to define, which can cause people to be uncertain of how to manage complaints. However, there is a legal definition. The Equality Act 2010 defines sexual harassment as “*when someone engages in unwanted conduct of a sexual nature, which has the purpose or effect of either violating someone’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.*” Readers should pay special attention to the fact that it says, “*purpose or effect*”, this means that sexual harassment can be accidental or unintentional, if a person perceives it to be sexual harassment, it is sexual harassment. It is also important to note that “sexual harassment” relates to the sex of the perceived target, not the act committed, and that sexual harassment can occur from one incident or from on-going actions.

Despite sexual harassment being brought into focus in 2017, it has long been an issue that has concerned many professionals in employment law, and has been the subject of many studies/surveys:

- In 2013 employment law specialists Slater and Gordon found that 60% of women had experienced inappropriate conduct in the workplace.
- In 2016 Trades Union Congress and Everyday Sexism Project found that 52% of women had experienced unwanted behaviour of work. One in five women reported the problem, but of those one in five 80% found that no real changes were made / the problem continued, and 16% found that their complaints made the situation worse.
- In 2017 Radio 5 Live found that 53% of women and 20% of men experience sexual harassment in the workplace, but 63% of women chose not to report it, and 79% of men chose to stay silent.

How to Manage Alleged Sexual Harassment

The first thing an employer should consider is whether their Company has a culture that invites or excludes sexual harassment. The Company culture sets the tone for employee behaviour. Employees who work in an environment that regularly focuses on equality, respect and inclusivity are more likely to be respectful and considerate towards their colleagues. Just having a policy in a folder is not enough. Employees need to be constantly reminded of the expectations and company rules with regards to equality, bullying, harassment and victimisation, and the consequences of failing to meet those expectations and company rules.

When a complaint is raised the nature and severity of the alleged actions need to be assessed. Employers need to be careful to not immediately “brush off” something that may appear insignificant, just because something does not offend one person does not mean it won’t offend another. It is also important to find out what the individual wants to happen, do they want an apology? Do they believe there needs to be a policy change or more internal communication? Do they feel that this warrants formal management? Their desires can often help management to understand how a situation needs to be managed. Some employees don’t want there to be any management of the individual, they just want to talk about the experience and have someone listen. Regardless of the employee’s desires, the employer must ensure all complaints are documented and kept on file for a reasonable amount of time, in case they need to be referred to at a later date.

In some cases, it may be that the employee’s manager is the alleged perpetrator. This could make the employee feel that they are unable to raise a complaint, or that if they do they will be penalised or treated poorly. One way to avoid this is to create a confidential reporting system for harassment or bullying, and a taskforce to deal with such complaints. If employees know they have these resources available to them, they are more likely to feel comfortable voicing any concerns they may have. Consideration should also be given to the involvement of a third party to investigate or manage any allegations of sexual harassment. It is a legal requirement to deal with complaints objectively, but this can be difficult when the complaint involves members of management, so the involvement of a third party could help to ensure objectivity.

Employers should remember that they have a duty of care towards both the alleged victim and the alleged perpetrator. Sexual harassment allegations are serious and can be stressful, emotional and embarrassing for everyone involved. Despite everyone’s best efforts to keep allegations etc. confidential, colleagues can become

aware of the situation. Because of this, it is important to remember that no-one should be considered “guilty” until a thorough process has been followed. The “punishment” should also fit the act. In some cases of sexual harassment, a summary dismissal will be appropriate, but in other cases a written warning or a letter of concern will be equally appropriate. Every case needs to be managed on its own merit.

How Can We Help

If you would like help with introducing and implementing a Bullying and Harassment at Work Policy or similar, or have any queries relating to the content of this newsletter, or any other HR related topic, please don't hesitate to contact us at hradvice@hasslefreehr.co.uk