



Blog: Sexual harassment, work and the law

*A recent survey by the TUC has highlighted that sexual harassment at work can, in some sectors, be prevalent, writes **David Hoey**.*

The law

The law in this area is relatively clear. There are three situations whereby unlawful harassment exists:

1. Where there is unwanted conduct of a sexual nature which has its purpose or effect to either violate the person's dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment.
2. Where there is unwanted conduct relating to gender which has its purpose or effect to either violate the person's dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment.
3. Where a worker rejects or submits to sexual advances and is then treated less favourably.



David Hoey

The protection the law provides is therefore very wide. A number of issues arise.

Issues arising

Whether or not the conduct is unwanted is a question of fact for the Tribunal to determine. The fact that a junior worker participates in the conduct does not automatically mean that the conduct was wanted and the context needs to be fully considered.

There is no definition of "sexual nature" within the legislation which means that Tribunals will need to look at the nature of the behaviour and make a judgment call. This would include obvious sexual conduct, such as touching or innuendo.

For the second situation above, there is no requirement that the gender involved relate to the individual being harassed. Thus it is possible for a man to be harassed about the conduct which relates to men or women. If a woman were to be harassed in the presence of another man, it would be possible for that man to claim that the treatment he received amounted to unlawful sexual harassment. This shows how wide the definition is.

It is also noteworthy that it is sufficient that the conduct has the relevant purpose or relevant effects; it does not need to have both. Thus provided the purpose of the conduct is to create the necessary consequences, the fact that it does not do so is not relevant. Similarly provided the effect of the conduct is that the relevant consequences exist, the fact the person did not intend to do it is not relevant.

The context of the treatment should also be taken into account since seemingly innocuous acts (such as buying gifts or seemingly neutral comments or even placing materials on higher shelves) could potentially satisfy the requirements given the wording used.

Areas where liability does not attach

Liability attaches to the employer where the conduct takes place "in the course of employment". It goes without saying that there are grey areas here. For example would a work's night out always be regarded as an extension of the working environment? Where is the line to be drawn? These are all questions of fact for the Tribunal to determine and would depend upon the circumstances of each case.

An employer has a defence where it can be shown that all reasonably practicable steps were taken to prevent the harassment (and indeed any harassment) from occurring. This means that ongoing steps are needed, including training of all staff, having a clear and up to date policy and ensuring this is regularly applied (and policed). It is also important to remember that the person who is responsible for the harassment itself can be personally liable for their actions. There is no limit upon the compensation a Tribunal can award in this area. The fact that no action by the employer could have prevented the particular harassment is not relevant in assessing whether the employer had taken all reasonable steps, which as a minimum means policy and training etc.

Avoiding claims

Ultimately employers will want to avoid claims for harassment and indeed look to inculcate and foster a culture within the organisation which is free from harassment and unwanted behaviour. Creating the right atmosphere is key. Keeping staff up to date as their responsibilities and training them as to the position regularly is a good starting point. It is also worthwhile considering the benefit of mediation where problems arise in the workplace to try and ensure workplace relations are and remain good.



- *David Hoey is a partner at **BTO Solicitors**.*