

ACTIVITY 23: - Dignity at Work, Issues in your workplace



Zero Tolerance - Dignity and at Work

Dealing with Harassment,
Discrimination & Bullying

YOUR GUIDE

*Includes Unite Checklist for
representing a member who
has been harassed or
bullied and a Model
Agreement*

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How to use this guide

- **If you are experiencing harassment, discrimination or bullying**
See section 1 for information on how Unite can help
- **If you are asked to represent a member complaining of harassment or bullying**
Use the guidance in section 2 on representing a member, section 3 on the law, section 5 on listening support available, and use the Checklist for Representatives and the HDB(1) Report Form in section 8
- **If you are asked to represent a member accused of harassment or bullying**
See section 4 on getting the representation right and use the HDB(1) Report Form in section 8
- **If you want to negotiate dignity at work policies**
See section 6 on the Unite negotiating agenda, section 7 on negotiating a workplace policy, and section 8 for the Unite model agreement

Message from the General Secretary

Winning equality at work is a fundamental principle of trade unionism. Unite – the Union is opposed to all forms of workplace harassment.

Workplace harassment and bullying are some of the most serious forms of discrimination. As part of our commitment to ending discrimination at work and promoting fair and decent workplaces, the union needs to ensure that no member suffers harassment, discrimination or bullying.

The union also has legal obligations. All representatives must make sure they understand how to deal with harassment, discrimination and bullying and follow these guidelines.

Please play your part in ensuring all working men and women are treated with dignity and respect.

Len McCluskey

General Secretary

Introduction

Harassment, Discrimination and Bullying cause untold misery and humiliation to thousands of workers, particularly women, black, Asian and ethnic minorities, disabled workers, LGBT, young and older men and women every year. All Unite – the Union members should be able to turn to the union for advice, support and representation if they are subjected to unwanted, offensive attention, exclusion, verbal or physical abuse and undermining of their capabilities.

Unite representatives need to be fully aware of harassment, discrimination and bullying to deal with it effectively, to provide support to members, and to ensure workplaces where there is zero tolerance of all forms of harassment, discrimination and bullying.

This booklet provides guidance for members and representatives on tackling harassment, discrimination and bullying if it arises, on preventing it from occurring in the first place and on ensuring workplaces where there is dignity and respect for all. For regional back up and support, please see contact details inside the back cover.

Diana Holland

Assistant General Secretary – Equalities

Siobhan Endean

National Officer for Equalities

ZERO TOLERANCE OF HARASSMENT, DISCRIMINATION & BULLYING

Unite – the Union Rules on Equality

Rule 2.1.6 To promote equality and fairness for all, including actively opposing prejudice and discrimination on grounds of gender, race, ethnic origin, religion, class, marital status, sexual orientation, gender identity, age, disability or caring responsibilities.

Unite Policy

Unite – the Union has an important tradition of representing members who have been harassed, discriminated against and bullied, and clear policy in support of zero tolerance and dignity at work.

Policy calls for:

- **Good workplace policies and procedures to prevent and deal with all forms of harassment, discrimination and bullying.**
- **Recognition for Unite Listening Support Network on harassment, discrimination and bullying.**
- **Community and workplace action on domestic violence, disability hate crime, racist attacks, homophobic and transphobic hate crime, attacks on young people and targetting older people.**

The Unite HDB(1) Report Form at the back of this guide is important for ensuring fair procedures and for monitoring cases of harassment, discrimination and bullying.

Section 1

Harassment, Discrimination & Bullying: A Workplace and Trade Union Issue

What are harassment, discrimination and bullying?

Harassment, discrimination and bullying complaints present some of the most challenging cases for representation at work, including *the union's legal responsibility* to get the case absolutely right. At the workplace, harassment and bullying degrade individuals and create a work environment of fear and intimidation which undermines trade union unity. It can also be a contributing factor to other workplace issues, such as unequal pay, job insecurity, sickness absence and lack of progression. What is important in any definition of harassment is the complainant's perception of the behaviour. If she or he finds the behaviour unwelcome, then that members' case must be treated seriously.

Harassment can take different forms, for example verbal, written, or physical abuse, exclusion, gestures, graffiti, pictures, flags or emblems. It may be a one-off or continuous incident. The impact of harassment needs to be recognised. People suffering harassment need to have confidence they are being listened to and taken seriously.

The legal definition is broadly that harassment is "unwanted conduct that violates people's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment."

Discrimination means less favourable treatment related to your sex, race, disability, sexual orientation, gender identity, caring responsibilities, age, religion or belief, class, or other personal characteristic. It can affect pay, hours of work, training, promotion and conditions at work.

Bullying is unwelcome behaviour which is offensive, humiliating, abusive and mostly carried out by using unwarranted or invalid criticism. Also by isolating the person and focusing on distorted or fabricated allegations of underperformance and misuse of power. It often includes threats, abuse, teasing and practical 'jokes' which make the recipient feel upset, threatened, humiliated or vulnerable.

Bullying and harassment may be by an individual against an individual (perhaps by a manager or supervisor) or involve groups of people. It may not always be obvious but it is always unwanted and unwelcome. Bullying and harassment can be face to face or in written communications, email, phone, and automatic supervision methods such as computer recording of downtime from work. Bullying and harassment cause anxiety, humiliation and helplessness. It makes people frightened and demotivated, causes stress, loss of self-confidence and self-esteem and can lead to job insecurity, illness, absenteeism and even resignation. Almost always job performance is affected and relations in the workplace suffer.

What are the different forms of workplace harassment?

Sexual harassment is a form of sex discrimination. It takes place when someone is subjected to unwelcome and unwanted sexual behaviour or other conduct related to gender. It is overwhelmingly women who suffer from sexual harassment, but some men experience it too. Young men and gay men can be particularly vulnerable to this sort of victimisation.

Sexual harassment includes unwelcome behaviour which can range from leering looks and verbal abuse of a sexual nature, displaying pin ups and other sexually suggestive pictures, objects or written materials, unwelcome touching and, in extreme cases, assault and even rape.

Racial harassment is a form of race discrimination. It takes place when someone is subjected to unwelcome and unwanted racial behaviour, or other conduct related to **race, colour, ethnic or national origins**. Racial harassment can range from racial jokes, graffiti, ridiculing or insulting

and name calling because of someone's race or nationality, cartoons or pictures that degrade people of a particular racial or ethnic group, deliberate exclusion from normal workplace conversation or social events and even physical assault.

Harassment of disabled workers and unwanted behaviour based on a person's impairment or condition is disability discrimination. Harassment may be directed at an individual or a group. It can be patronising or offensive comments, inappropriate reference to a person's disability, unwelcome discussion of the impact of disability, communicating with a disabled person via a third party, prejudging a disabled person's capabilities, unwelcome interference with personal aids or equipment, uninvited physical contact, staring, or refusing to work with or exclusion of people with disabilities from social events or meetings.

Harassment related to age is age discrimination and can affect both **young and older workers**. This can take the form of ageist 'jokes', derogatory remarks, bullying, name calling, assumptions regarding the person's ability to learn, offensive remarks, overbearing supervision or unjust criticism, inappropriate initiations for new workers, ignoring views and opinions, exclusion or isolation and setting a person up to fail.

Homophobic bullying and harassment of lesbian, gay and bisexual (LGB) workers is discrimination related to **sexual orientation**. It can include offensive "banter", unwanted sexual references, spreading malicious rumours, verbal abuse, name calling, stereotyping, false allegations of misconduct, actual or threatened unwanted disclosure of sexual orientation, derogatory comments, lack of recognition and excluding same-sex partners from social events, intrusive questioning about a person's domestic circumstances and threatened or actual physical or sexual assault.

Harassment related to Religion or belief is discrimination. It can take the form of offensive comments or 'jokes', refusal to work with a person because of their **religion/belief or non religion/belief**, excluding a person from social events or meetings, making assumptions about a person's religion/belief or non religion/belief, mocking practices associated with particular religions or beliefs, unfair allocation of work and intimidation.

Harassment related to gender identity is a form of discrimination. It is unwanted behaviour against **trans people**. It can happen when a person intends to undergo, is undergoing or has undergone gender reassignment and equally when this is not the case. It can include hostile and intimidating behaviour, demeaning treatment relating to the person's sex and sexual orientation, exclusion from workplace activities, refusal to share toilet and other workplace facilities, taunts, verbal and physical abuse.

Why does bullying occur and what forms does it take?

Bullying may occur for many reasons and anyone may become a target. Bullying may be part of the culture of an organisation. It may be seen as strong management, or even as the effective way of getting things done.

What is increasingly clear is that organisational factors play an important part in whether or not bullying takes place at work. The sorts of workplaces where bullying is more likely to occur are those where there is: an extremely competitive environment, fear of redundancy, envy among colleagues, an authoritarian style of management and supervision, organisational change and uncertainty, lack of training, deskilling, poor work relationships, no clear codes of acceptable conduct, excessive workloads and demands on people and no procedures for resolving problems.

Bullying at work can take many forms: it might be overt and insinuating or it could be more subtle and insidious, gradually wearing the person down over a period of time. It may occur in front of others, who are often too afraid of becoming the next target to do anything to support the bullied person. Very often, however, there are no witnesses and the victim is afraid of taking action.

The most common forms of bullying are: using fear tactics, threats, abuse; ridiculing or belittling, often in front of others, including teasing or 'jokes' to humiliate; using excessive supervision; being excessively critical; constantly taking the credit for the other person's work but never taking the blame when things go wrong; constantly overruling the person's authority or removing whole areas of work responsibility resulting in deskilling.

Other forms of bullying include: setting impossible objectives or constantly changing the work remit without telling the person, and then criticising or reprimanding them for not meeting demands through deliberately withholding information, ostracising, marginalising, excluding, spreading malicious rumours, refusing reasonable requests for leave, training, or blocking the person's promotion.

The Law

Harassment as a form of discrimination is unlawful and employers can be liable for employees who harass others at work. Employers are responsible for protecting their employees' health and safety, and bullying can be raised as an industrial relations issue and as a health and safety issue. Section 3 gives details of the law in cases of harassment and bullying in England, Scotland, Wales, Northern Ireland and the Irish Republic, as well as making reference to European law and International standards.

Criminal charges can be brought against harassers especially in cases of physical assault. In addition, the courts have also awarded damages on the grounds that the employers and supervisors were negligent in their duty to protect an employee.

The responsibility of the union

As well as having a clear moral responsibility to take action on harassment and bullying, the opposition of the union to all forms of harassment and bullying is set out in Rule, as included at the beginning of these guidelines.

The union also has a legal duty to ensure that complaints are taken up and dealt with correctly. These guidelines and the HDB(1) Report Form procedures explained in these guidelines are crucial reading for every shop steward/workplace representative, union equality representative, safety rep and officer.

The union has a legal requirement under equality law in England, Scotland, Wales, N. Ireland, Republic of Ireland and Europe to offer its services without itself discriminating.

This is particularly important to take into account where both the complainant and the alleged harasser/bully are members of the union (please refer to section 4 on getting representation right).

How widespread is harassment, discrimination and bullying?

Surveys show just how common harassment and bullying is:

- The TUC survey of safety reps in 2010 found that one in three safety reps identified harassment and bullying as a problem in their workplace that was linked to stress. The survey identified that one fifth of all UK employees have experienced some form of bullying or harassment over the last two years. The survey also reported that the groups most likely to become victims of harassment and bullying are BAEM employees, women and disabled workers. Nearly one third (29%) of Asian employees have experienced some form of harassment or bullying, compared with 18% of white employees. Disabled workers are at least twice as likely to experience one or more forms of harassment and bullying.
- A 2012 study by University of Sheffield and Nottingham University showed that eight out of 10 respondents had experienced cyberbullying – for example receiving an offensive text or email – at least once over the past six months. The researchers also found that the impact of

cyberbullying on workers' mental strain, lower job satisfaction and wellbeing could be higher than that of other forms of bullying. In addition, because of the remote, invisible nature of cyberbullying, people felt less empathy for the victims, and those who were subjected to it were less likely to report it.

- Almost one in 20 workers had suffered violence in the workplace according to ESRC and of those who reported, 13% said assault was a daily experience. Majority of the attackers were customers, clients or members of the public.

Widespread problems of workplace harassment and bullying are backed by the union's own experience. While the number of harassment and bullying incidents reported to the union varies throughout the country, in some regions as many as one or two serious new cases arise every week.

In the past, union members suffering harassment or bullying have been reluctant to report it, partly because of their own embarrassment and partly through a lack of confidence that reporting the incident will improve their situation.

Times have changed though. More and more women and men are now demanding redress.

Unite – the Union is firmly committed to supporting members suffering harassment, discrimination and bullying at work – and to ensure it is stamped out of every workplace.

No laughing matter

Some people think that sexual remarks, for example, 'jokes' and touching are just a bit of fun at work, that racial stereotypes, anti-gay banter or name-calling related to age or disability are only objected to by those with no sense of humour. But where this attention is unwanted, it can cause a great deal of distress, through embarrassment, intimidation, isolation and exclusion.

Our campaign against harassment and bullying is not about stopping social banter between friends but ensuring that all members feel safe and comfortable in their working environment.

Above all, harassment and bullying is about power. It reflects the position of women, black, Asian & ethnic minorities, disabled, LGBT, young and older people in society, which is why harassers and bullies are often line managers, and the victims under their supervision.

But harassment and bullying is also common among employees on the same grade. The effects can be particularly distressing in workplaces in which few women or black, Asian or ethnic minorities work, where part-time, agency and migrant workers face harassment and bullying, where disabled workers are overlooked and LGBT workers are not "out" in the workplace, trans workers are targeted, young workers are undermined and older workers are not given the opportunity to develop.

Harassment, discrimination and bullying aim to undermine the person targeted, often leaving them feeling humiliated and lacking confidence. It is not only their work performance that can suffer, but their health and home or social life as well. Their pay rate and the job itself can even be put at risk.

Case A

A college in Nottinghamshire agreed to pay £15,000 compensation and to issue an apology and a positive reference to a disabled worker. The employee who had ME (Chronic Fatigue Syndrome) was sacked from her job as a Disability Co-ordinator.

The College Principal took over her line management and failed to adjust her working hours to accommodate her disability and she was consistently bullied and intimidated by her for a lengthy period until she was forced to take extended sick leave.

For some women, black, Asian and ethnic minorities, and others who have raised harassment issues, life at work becomes so miserable that they may ask for transfers or resign. **No one should ever be forced to do this.**

Some harassment cases come to light as a result of an investigation into disciplinary charges. For example a woman might be disciplined over a trivial work problem after rejecting the sexual advances of a manager.

Unite – the Union is committed to fighting harassment and bullying in all its forms. The union recognises harassment as a disciplinary matter and will support members who experience harassment and bullying by actively pursuing their case through grievance procedures and where necessary, legal proceedings.

Whatever the circumstances, all workers have a right to a working environment which is free from harassment, discrimination and bullying, and they should not be made to feel guilty or embarrassed for exercising those rights.

Section 2

Representing a member suffering harassment, discrimination or bullying

A sympathetic approach

It is important that all representatives are sympathetic to any members complaining about harassment, discrimination and bullying. Representatives should remember that:

- Members in this stressful position are likely to find it difficult to explain the problem clearly and quickly
- It may be extremely embarrassing for the member to reveal specific remarks made about their appearance, name-calling, sexual suggestions, racist abuse and in particular any physical abuse
- A victim may not have even told their family or friends – because of its highly personal nature and fears about whether they will be seen in any way as partly responsible
- The member may need reassuring that the union opposes harassment and bullying

Every representative should be aware of these difficulties. If a member makes a complaint about harassment and bullying, it is crucial that she or he does not become isolated. Representatives should make every effort to ensure a hostile environment does not develop. Please refer to the Checklist for interviewing a member on harassment and bullying, part of the HDB(1) Form at the end of this Guide.

Listening support

In cases of harassment and bullying, it can be important to offer the member the opportunity to speak to a member of the Unite Listening Support Network (please refer to Section 5 for more details). This additional support is complementary to workplace representation, officer support, and legal back up available.

The nature of harassment, discrimination and bullying can mean that cases may go unreported where members do not feel confident or comfortable raising the issue, which is why the Listening Support Network was set up. It is **the union's aim that all women complainants in sexual harassment cases should have the opportunity to talk to a Unite woman representative in the first instance, and that this commitment also applies to black, Asian and ethnic minority members, disabled members, LGBT, young and older men and women members.** The Regional Women's & Equalities Organiser will help identify a member to provide listening support to the complainant from the Unite Listening Support Network.

Case B

A young woman member had been pestered with unwanted attention by the shop manager where she worked. The harassment culminated in a physical assault on the young woman.

She first approached a male union officer but found it too embarrassing to give him the full details. A woman full time officer was called in to overcome this difficulty and get the details of the complaint. The union then took up the young woman's case. Support from other women encouraging her to pursue the case was crucial throughout the lead up to the Tribunal hearing.

Once the Tribunal was under way, the evidence in support of the young woman was overwhelming, leading the Tribunal's chairperson to suggest an out of tribunal settlement. At first the company refused, but on taking legal advice made a four figure offer.

Agreeing a way forward

Confirm that the member does not want or welcome this sort of behaviour and make notes of the reported incident or incidents for your own record.

You should also give the member firm assurances that the matter will be treated in strictest confidence.

Action carried out on his or her behalf – even having a quiet word – must only take place with their full consent.

Procedures for dealing with harassment and bullying, along with their legal rights, should be clearly outlined to the complainant, using the HDB(1) Report Form.

Representatives must be certain that the member is willing to pursue the proposed course of action.

The HDB(1) Report Form

This Report Form is very helpful in assisting representatives follow the correct procedures, and as well as a checklist for interviewing the member, it includes a section for the member to sign confirming they are aware of legal deadlines, including the need to raise a formal grievance, and their responsibilities in this regard. Please refer to Section 5 for more details and there is a copy of the form in Section 8.

In any event, you should always advise the complainant to keep **full notes** of incidents involving the harasser or the bully including times, locations, what happened, any witnesses and copies of incriminating emails, texts or letters. These notes may be crucial if further harassment, bullying or victimisation takes place and of course, if a legal case is taken.

You may also need to discreetly ask other workers if they have had similar experiences although you should **get the member's approval** before you do this. Again assure the member that **confidentiality** will be maintained in any of these discussions.

It is important to stress that the representative's strategy in dealing with the harassment depends primarily on how the complainant views the harassment, not on how anyone else would see it.

For example comments about personal relationships and appearance might be extremely distressing to some people but not so serious to others. In particular, a member's gender, cultural background, race, age, sexual orientation, gender identity, disability, or just being new in the job might make some conduct more threatening to them – and those differences might mean they become a target for abuse from harassers or bullies.

Depending on the circumstances, between you it may be decided:

- to pursue the matter informally without reference to the employer

or

- to go straight to the formal grievance procedure

For some incidents of harassment, it may be appropriate to go straight to the formal grievance procedures – or for a physical assault, to advise and help the member to report the incident to the police.

Remember that strict time limits apply for taking discrimination cases up legally and that a formal grievance must be lodged before a legal case can be pursued. (Please refer to Section 3 on the Law and the Unite HDB(1) Form at the end of this Guide: the time limit is three months less one day from the incident, and six months in the Irish Republic).

Informal union action

In some circumstances, the complainant may only wish the harassment or bullying to stop, get an apology and not take any action which involves management.

An informal meeting could be set up either with the alleged harasser or the bully and the representative – or arranged between both the parties and the representatives.

If the member has not explicitly told the harasser or the bully that his or her behaviour is unacceptable, the letter shown below could be used.

The harasser or the bully should be told that his or her behaviour cannot be tolerated, advised that the meeting or conversation is informal but if the harassment or bullying continues it will be followed by more formal procedures.

<p>Dear.....</p> <p>I am writing to complain about what you (did/said) to me (on date/yesterday/this morning when you.....</p> <p>Over the previous months you have</p> <p>I want you to stop this behaviour now/calling me</p> <p>I find this offensive and unacceptable. I am keeping a copy of this letter and I shall take further action if you do not stop immediately.</p> <p>Yours sincerely,</p>

Example letter

Formal procedures

If these informal measures prove to be ineffective, then the member may decide to pursue the case through the formal workplace procedures. It may be the case that the complainant wants the incident of harassment or bullying pursued formally straight away.

Depending on how clear the case is, the complaint will usually be progressed through the grievance procedure and if upheld, the alleged harasser or the bully will then be subject to the disciplinary procedure.

You should assure the member complaining of harassment or bullying of the union's maximum support throughout the formal procedures.

Try to limit the amount of stress for the member by making sure that both procedures have strict time limits and that the member does not have to endlessly repeat her/his evidence when written submissions could be considered instead.

Remember that the time limit for taking up a harassment case legally is normally three months less one day from the last incident of harassment in Britain and N. Ireland and 6 months in Republic of Ireland. This may differ from the time limits in your established grievance procedure, so it can be necessary to submit the legal claim even while the grievance/disciplinary procedures are not exhausted. If there is a satisfactory outcome from the internal procedures, the legal claim can then be withdrawn. Remember, a formal grievance must be lodged before a tribunal case can be submitted.

The grievance procedure

Using an established grievance procedure is a formal way for a member, supported by the union, to make a complaint to which the employer is obliged to respond and treat seriously.

The member's line manager should be notified of the situation. If possible also consult a manager or personnel officer who has had training in harassment and bullying cases. The employer should nominate an appropriate person from the management team to be responsible for the case.

The employer should fully investigate the case – with the union ensuring that this is carried out fairly, sympathetically and thoroughly. This will normally involve interviewing both parties and witnesses. Depending on the nature of the alleged harassment or bullying, consideration should be given to suspending or relocating the alleged harasser or the bully for the period of the investigation and procedure.

Following the complaint, representatives should be vigilant about further harassment or bullying and any form of victimisation from management such as any changes to the complainant's working practices or experiences of additional work problems, or even disciplinary action against the complainant.

The disciplinary procedure

If the complaint of harassment and bullying is upheld in the grievance procedure, the employer should then start disciplinary proceedings against the harasser or the bully.

If the complainant acts as a witness in a disciplinary procedure, representatives should negotiate a formal right for him or her to be accompanied by a Unite representative throughout the procedure. (please refer to section four for advice if both people are members of Unite).

Either during the procedure or on its outcome, do not agree to:

- the complainant being transferred – unless the member wants a transfer
- the complainant being suspended
- the complainant being forced to continue working with the harasser or the bully

During the procedures, the harassment and bullying should be treated as a disciplinary offence, either as misconduct or gross misconduct. A charge of gross misconduct normally requires the employee to be suspended on full pay. For a lesser incident, the alleged harasser or the bully should be relocated pending the outcome of the procedure.

Case C

An NHS manager suffered 'persistent discrimination and an intimidating environment' when unlike his white colleagues, he was bullied and harassed about his work. His health suffered very badly and although with Unite's support he won a tribunal case including compensation, his aim is that no-one should ever have to suffer as he did.

Section 3

Harassment, Discrimination, Bullying and the Law

Legal responsibilities of Employers

Employers have a duty to prevent harassment, bullying and discrimination and a duty of care towards the whole workforce. Employers are usually responsible for acts of bullying and harassment by their employees. ACAS¹ therefore strongly recommends that all employers should make clear that such behaviour will not be tolerated in the workplace. They also recommend that a statement on the standards of behaviour is used to help avoid the consequences of bullying and harassment such as poor working relationships, low morale, inefficiency and potentially the loss of staff.

Legal rights on Harassment, Discrimination & Bullying

Workers can bring complaints under laws covering discrimination and harassment, health & safety and unfair dismissal. Anti-discrimination law is a day one right, and workers are also covered at interview:

The Equality Act 2010 gives protection against discrimination harassment and victimisation because of the following “protected characteristics”:

- Gender
- Pregnancy and maternity
- Race, colour, ethnic or national origin
- Disability
- Sexual orientation
- Age
- Gender reassignment
- Marriage and civil partnership
- Religion or belief and non-religion or non-belief

The Equality Act 2010 also identifies the following as “**prohibited conduct**”:

- **Direct and Indirect discrimination** – on all “protected characteristics”
- **Harassment** – a specific protection related to sex; race; disability including disabled worker’s impairment or condition; sexual orientation including harassment related to being a lesbian, gay man, heterosexual or bisexual worker; age, both younger and older workers; gender identity and religion or belief including no religion or belief.
- **Victimisation** – protection for a person who have brought or is suspected to bring proceedings under the Equality Act 2010 or supported/given evidence for another person bringing proceedings under the Act.
- **Third party Harassment** – The Equality Act 2010 gives protection against this form of harassment by eg. customers, clients or visitors related to all protected characteristics.

However despite overwhelming opposition, the Government **repealed the third party harassment** provision under the Enterprise and Regulatory Reform Bill from April 2014. The government said that “it is unfair that employers should be liable for the actions of third parties over whom they have no direct control. Following the repeal there is nothing in the Equality Act 2010 that makes explicit reference to employer liability however, there is protection from Third Party Harassment from the EU Equal Treatment Directive².

¹ Labour Relations Agency in Northern Ireland Labour Relations Commission in the Republic of Ireland

² The decision of *EOC v Sec of St for Trade and Industry* (2007) suggests that liability for third party harassment may be read into the general harassment provisions of the Act by virtue of the EU Equal Treatment Directive (2002/67) in certain circumstances. The Employment Tribunals President recently remarked that regardless of the repeal of section 40, “the requirements of EU law mandate a form of protection for third party harassment, possibly going beyond the limits imposed by section 40”. However the scope of such protection is far from clear and was the original reason the issue was clarified in the Equality Act 2010.

Unite reps can still negotiate for the same steps that courts have identified as being “reasonable” ones to prevent third party harassment including:

- a workplace policy on harassment that include steps to deal with third party harassment;
- Notifying third parties of the policy on harassment;
- Including terms in contracts with third parties;
- Encouraging reporting of incidents of third party harassment; and
- Including third party harassment in workplace complaints procedures.
- **Employment Rights Act** In some circumstances, an employee can claim ‘constructive’ unfair dismissal, if they are forced to resign due to harassment and bullying at work. There are time limits and service qualifications which can be complicated, therefore because of the different legal rights that may be involved, contact your shop steward, Unite officer and/or Regional Women’s & Equalities Organiser, who can ensure legal advice is obtained
- **Health & Safety at Work Act 1974** Under this law, employers are responsible for the health, safety and welfare at work of all employees. This includes creating a working environment free from stress, bullying, violence and harassment. Please refer to the union’s Health and Safety Bulletins. For more information visit www.hse.gov.uk
- **Protection from Harassment Act 1997** protects people from conduct amounting to harassment of causing fear of violence.

Law in Northern Ireland

In **Northern Ireland**, protection against discrimination, victimisation and harassment is covered by the following:

Gender – The Sex Discrimination (Northern Ireland) Order 1976, as amended by the Sex Discrimination (Northern Ireland) Order 1988; the Sex discrimination (Indirect Discrimination & Burden of Proof) Regulations (Northern Ireland) 2001; the Employment Equality (Sex Discrimination) Regulations (Northern Ireland) 2005; the Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2008 – These laws prohibit discrimination and harassment on the grounds of sex; pregnancy and maternity leave; gender reassignment; being married or being a civil partner.

Race – Race Relations (NI) Order 1997, Race Relations Order (Amendment) Regulations (Northern Ireland) 2009, Race Relations Order (Amendment) Regulations (Northern Ireland) 2003 – these laws prohibit discrimination and harassment on the grounds of race; colour; ethnic or national origins; nationality; belonging to the Irish Traveller community.

Disability – The Disability Discrimination Act 1995 (the DDA) as amended by the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004, the Disability Discrimination (Northern Ireland) Order 2006 – these laws prohibit discrimination and harassment against disabled persons.

Sexual Orientation – Employment Equality (Sexual Orientation) Regulations (NI) 2003 prohibits discrimination and harassment on the grounds of sexual orientation. The Equality Act (Sexual Orientation) Regulations (NI) 2006 extend the protection against discrimination to the provision of goods, facilities and services, the management and disposal of land or premises and the provision of education in schools.

Trans – The Gender Reassignment Regulations (NI) 1999 amends the Sex Discrimination (NI) Order 1976 to make it unlawful to discriminate on grounds of gender reassignment in employment and training. The Sex Discrimination (Amendment of Legislation) Regulations 2008 introduced protection from direct discrimination on grounds of gender reassignment in the provision of goods, facilities, services or premises.

Age – The Employment Equality (Age) Regulations (Northern Ireland) 2006 make it unlawful for employers and others to discriminate including harassment and victimisation on grounds of age in the areas of employment, vocational training and further and higher education.

Religion or Belief – The Fair Employment and Treatment Order 1998 as amended by the Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) and the Fair Employment and Treatment (NI) Order (2003) – These laws prohibit discrimination and harassment on the grounds of religious belief or similar philosophical belief, and political opinion.

Third party harassment – Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2008 protects employees from third party harassment on gender grounds. In Northern Ireland, there is no specific legislation prohibiting third party harassment on any of the other protected grounds.

Law in Republic of Ireland

The Employment Equality Acts 1998-2011 define harassment as any form of unwanted conduct on the nine discriminatory grounds and sexual harassment as any form of unwanted verbal, nonverbal or physical conduct of a sexual nature. In both cases the unwanted conduct may include acts, requests, spoken words, gestures or the production, display or circulation of written words, emails, text messages, pictures or other material. It also specifically protects a person being penalised in any way by their employer because they have made a complaint about discrimination under the Equality Legislation.

The Equal Status Act 2000 was amended by the Equality Act 2004, the Disability Act 2005 and the Civil Law (Miscellaneous Provisions) Act 2008. They are known collectively as the Equal Status Acts 2000–2008. The Acts outlaw harassment on nine grounds: gender (including trans identity), marital status, family status, sexual orientation, religion, age, race and traveller community.

What about taking legal action?

Taking a legal case is generally considered to be the **last resort**, when all other avenues have proved ineffective, but because of time limits it is important to be aware of the legal position. Also, the Government has introduced a standard internal 'three-step' procedure for dealing with dismissal, discipline and grievance issues which must be followed before a legal case can be taken. These steps involve a statement (setting out in writing the grounds for action or grievance), a meeting between the parties and the right to appeal. For further information please refer to the *Acas Code of Practice – Disciplinary and Grievance*. Note : Increasingly, government reports are suggesting that early mediation needs to be adopted as the approach.

If the situation is not resolved after following the grievance and disciplinary procedures then you can make a claim to an employment tribunal. You must make sure to keep a record of all incidents and meetings, and be aware of legal time limits if the internal procedures are taking a long time. **In Britain and N. Ireland, the legal application must be made within 3 months less one day of the latest act of discrimination. In Republic of Ireland the deadline is within 6 months.** Our union and others are campaigning for a 6 months deadline overall.

The three-month time limit can be extended in exceptional circumstances, if it is 'just and equitable'. The Tribunal will take into account:

- the reasons for the claim being late
- how late the claim is
- whether the employer is prejudiced
- whether it looks like a good claim

In Britain and N. Ireland, the **Questionnaire procedure**³ was usefully employed to build up a case of harassment, and sometimes assists in avoiding the need to go to a full legal hearing. In Britain, this provision was **repealed** under the Enterprise and Regulatory Reform Bill in force from April 2014. Question and answer guidance to replace the statutory questionnaire is available from ACAS and the Government Equalities Office.

To collect the necessary information to assist with discrimination, harassment and bullying cases, the following are some helpful alternatives:

1. A “non-statutory” questionnaire can be submitted and employment tribunals might make decisions based on the employer’s failure to respond. The act of submitting a “non statutory” questionnaire would be protected under the anti-victimisation provisions (s.27(d)) of the Equality Act 2010.
2. Once tribunal proceedings have started, a “request for additional information” could be submitted to the tribunal if the employer’s response is not specific enough. However, there are particular requirements for making such a request.
3. The tribunal judge has the power- on the request of the member, the employer, or his/her own initiative- to order disclosure or inspection of any documents and information.

The Coalition government has introduced the **tribunal fees** and most discrimination claims will cost £250 to lodge and a further £950 to proceed to hearing⁴.

Case D

A comment about a woman’s breast was ruled as unlawfully discriminatory in a 1994 Employment Appeal Tribunal case. A contract cleaning supervisor was offended by an employee, half her age, who was the son of the company director. Despite her complaint, the company failed to pursue disciplinary action against the employee and the woman resigned. The case showed that a single sexual remark can result in very serious detriment. This principle applies to all forms of harassment.

Further guidance on the law is also available from the Equality and Human Rights Commission (Manchester, London, Cardiff & Glasgow), the Equality Commission (Belfast) and the Equality Authority (Dublin).

European Law

European Directives outlaw harassment on grounds of gender, race, disability, sexual orientation, gender identity, age and religion/belief.

In April 2007, European TUC signed a framework agreement on harassment and violence at work. With this agreement European social partners firmly condemn harassment and violence in all their forms. The agreement aims to prevent, and where necessary, manage problems of bullying and physical violence in the workplace. Companies in Europe are now required to adopt a policy of zero-tolerance towards such behaviour and draw up appropriate procedures. Many signatories have implemented the provisions of this autonomous agreement and will continue to use the framework agreement as a tool to tackle harassment and violence at work.

³ *Dattan v Chief Constable of West Mercia* (2005 IRLR 327 EAT)

⁴ Also the disposable capital test has been introduced. This test will decide whether you are eligible for a Tribunal fee remission based on an assessment of your household disposable capital (for example, your savings and investments).

International Standards

International Labour Organisation core labour standards include non-discrimination alongside no child or forced labour, and the right to union organisation, collective bargaining and equal pay. In November 2006, the founding principles of the International TUC included clear commitments to oppose all forms of discrimination and harassment. Global Union Federations bring together unions from different industries and sectors internationally, and they too have clear commitments to oppose all harassment and discrimination.

United Nations Commission on the Status of Women agreed a resolution at its conference in March 2013 on “the elimination and prevention of all forms of violence against women and girls including at the workplace”. For more information please refer to www.un.org/womenwatch

Section 4

Getting Unite Representation Right

What if the harasser or the bully is a member of Unite?

The union is opposed to harassment and bullying and it will give its support to and represent members complaining of harassment and bullying. But if a harasser or the bully is a member of the union, that member is also entitled to representation.

It is important that whilst representing an alleged harasser or the bully, shop stewards/workplace representatives should stick to the facts of the case. Representatives should not make any personal attacks, slanderous accusations about the complainant or irrelevant comments about the complainant's personal life or personal relationships.

What if the complainant and the harasser or the bully are both members of Unite?

The guidelines for the informal union action should be followed as outlined in section 2. If the complainant wants to pursue the case to formal grievance procedure, then two different union representatives should become involved: one representing the complainant and one representing the harasser or the bully.

The complainant should not be represented by a union representative of lower rank than the person representing the harasser or the bully.

In the past, Unite established a precedent for dealing with a harasser or the bully who was also a member of the union. In this case, the evidence of harassment or bullying was overwhelming. The union advised the harasser or the bully of his rights and how to make a Tribunal application, but representation was only on the basis of ensuring the procedures were correctly followed.

What if the harasser or the bully is a Unite member and the complainant is a member of another union?

If there is more than one union in your workplace, you should establish an informal joint union procedure for dealing with an inter-union case of harassment and bullying.

What if the harasser or the bully is a Unite officer or representative?

The union will not tolerate harassment or bullying by one of its representatives. It is against the Rules of the union. The matter should be referred to a more senior officer such as the Regional Secretary or National Officer (who will involve the Regional Women's & Equalities Organiser or the relevant National Officer for Equalities or the Assistant General Secretary for Equalities as appropriate)

What if the harasser or the bully is a member of the public?

Many Unite members work in the service industries, which brings them into close contact with members of the public and clients. A large number of those members are vulnerable to harassment and bullying, especially in the caring professions and other "front line" occupations such as cabin crew, bar staff, bus drivers, bank staff and advice workers.

Employers have legal responsibilities under Equality law to ensure that there is no less favourable treatment at work. In addition, their "duty of care" under Health and Safety law is to ensure that their employees are working in a healthy and safe environment.

If a member is experiencing harassment or bullying from a member of the public, an employer may be failing in their legal duties.

Remind the employer of their legal responsibilities and incorporate an agreed statement in the Equal Opportunities Policy or Dignity at Work Policy which makes it clear that the employer will not tolerate harassment or bullying against any employee during the course of their duties by a member of the public.

Negotiate with the employer to distribute leaflets or display posters with this information in the public areas of your workplace.

It should also be possible to obtain a court injunction and to trace abusive phone calls, texts, social media, emails etc.

Unite membership

If the harasser or the bully is a Unite member, the union may also have a responsibility to take action against the member if the harassment or bullying is proven and the member is in breach of the union's rules (please refer to beginning of these guidelines).

Section 5

The Unite Listening Support Network and HDB(1) Report Form

The Listening Support Network provides personal support through active listening to members suffering harassment and bullying. The support is provided, mainly on the telephone, by Unite members who are trained volunteers called Listening Support Network members.

The establishment of Unite's Listening Support Network has three key aims:

1. **Trained Unite members providing other members with support, originally set up for women members to provide support for other women members who have suffered sexual harassment**

A survey of women's experiences of taking up cases of sexual harassment showed that over 90% of women union members experiencing sexual harassment would have liked to talk to a woman about it and that over 90% had only been given the option of talking to a man. By extending the Network to all harassment and bullying, including black, Asian & ethnic minority members, disabled members, younger, older and LGBT members and men who have suffered harassment, Unite can now ensure this principle is extended to all members who need support.

2. **A formal network available throughout the union**

Many Unite women and men members support each other all the time especially through difficult times. But setting up a formal network allows the union to ensure that the support network members have proper training for their role and get the assistance necessary from the union. It also allows a proper referral system so that every member can receive assistance if they require it, helping members who feel isolated.

3. **Clear distinction between providing support and providing representation**

The Listening Support Network also allows Unite to create clear distinctions between the roles and responsibilities of providing personal support and providing representation. Unite – the Union recognises that different skills, approaches and training are needed for each role. Both are crucial, and the union must ensure that it provides both effectively.

The HDB(1) Report Form

The union has a Report Form for recording every incident of harassment, discrimination and bullying. A copy of the form is at the back of this Guide. It includes a Checklist for interviewing a member about harassment or bullying.

Every representative of the union must ensure that they are familiar with this report form, and that they use it and send copies as requested, to their Unite officer, Regional for Women's & Equalities Organiser, as set out on the form.

Section 6

The Unite Negotiating Agenda for Zero Tolerance and Dignity at Work

Prevention is always better than cure. In the case of workplace harassment and bullying there are many policies that the union can pursue in negotiations with the employer.

The employer's legal liability for harassment and bullying provides good ammunition for negotiators in arguing for an effective harassment and bullying policy. Also, managers should encourage positive behaviour by being good role models and actively deal with discrimination, harassment and bullying.

The key principle is to create a working environment where there is dignity and respect and zero tolerance of harassment and bullying.

A clear policy agreement

- Make sure that the equal opportunities policy includes a clear statement that harassment and bullying will not be tolerated and is a disciplinary offence and/or negotiate a separate workplace harassment and bullying agreement, often called a Dignity at Work Policy (please refer to section 7)
- Publicise this agreement using Unite Zero Tolerance posters, leaflets etc around the workplace
- Workers should be given clear guidelines on what to do if they are harassed or bullied
- The potential for harassment and bullying should be considered in the health and safety risk assessment for staff who work in a variety of workplaces
- Precautions must be considered to eliminate or reduce the risk of violence, bullying or harassment e.g. throughout pairing of employees or supplying personal alarms

Training

- Equal opportunities training, including the policy on harassment and bullying should be included on all training courses
- Stress the need for all managers and supervisors to go on training courses to make them more effective in dealing with cases of harassment and bullying and more aware of their responsibilities
- Encourage all Unite workplace and branch representatives to go on a Unite education course that includes training on harassment and bullying cases. You should negotiate paid release for such training with management
- Raise the issue of harassment and bullying at your branch meetings. Suggest a speaker on the subject and promote discussion about the removal of racist graffiti, pin ups or pornographic materials. The most effective way of dealing with harassment and bullying is to create a working environment in which it is not acceptable

Union representation

- Make sure that the union's commitment to preventing all harassment and bullying is promoted through agreed procedures and through eg Unite posters, newsletters
- Negotiate facilities for union equality representatives at the workplace (The Unite's Union Equality Reps Toolkit is available to assist)
- Establish trained Specialist union equality reps to assist in cases of harassment at the workplace who will also need facilities and paid time off

Unite listening support network

- This listening support network is a back up for all Unite members suffering harassment, discrimination or bullying. It has been identified from our experience over many years, that additional listening support can make a vital difference. Please refer to section 5 for more information on the network.

Monitoring Harassment, Discrimination & Bullying – HDB(1) Report Form

- In order for Unite to monitor the problem of harassment and bullying faced by our members, and to ensure we get the representation right, a recording and monitoring procedure has been established. Any case regardless of the process, progress or the outcome, should be reported on the Harassment, Discrimination and Bullying Report Form HDB(1) for monitoring at regional and national levels. The Report Form should be sent to your Regional Women's & Equalities Organiser. Please refer to Section 5 for more information, and Section 8 for a copy of the HDB(1) Report Form.

Section 7

Guidelines for a Harassment and Bullying, Dignity at Work Policy Agreement

A policy agreement is necessary to:

- Reassure members who are being harassed "or bullied that action will be taken
- Gain the confidence of those who might be afraid to seek a solution due to fear of recrimination or ridicule
- Provide a clear commitment by the employer to deal with harassment and bullying – acting as a warning to all employees
- Show that the union takes harassment and bullying seriously

The policy agreement must be widely available to all workers and staff, including agency workers, and publicised to ensure these aims are fulfilled.

A policy agreement should contain:

- A clear definition of different forms of harassment and bullying including examples of behaviour
- A statement of the employer's commitment to tackling and preventing harassment and bullying
- Recognition of the union's commitment to tackling and preventing harassment and bullying
- How harassment or bullying will be dealt with – an outline of the procedures, including trade union representation

Section 8 contains a **Workplace Harassment, Bullying & Dignity at Work Policy Agreement** which can be used as a Model Agreement for negotiations in your workplace.

Further information

For any harassment and bullying at work, contact your shop steward, Unite/workplace representative, Unite officer and/or Regional Women's & Equalities Organiser. Further information is available on the union's web-site www.unitetheunion.org/unite-at-work/equalities/

Please refer to Unite Contact List at the back of this Guide, for details of your Regional Women's & Equalities Organiser

Equality & Human Rights Commission – 020 3117 0235 – www.equalityhumanrights.com

**Equality Advisory Support Service (EASS) has replaced EHRC Helpline and can be contacted:
Monday-Friday 9am-8pm and Saturday 10am-2pm
0800 444205 0800 444206 Textphone – www.equalityadvisoryservice.com**

Equality Commission for Northern Ireland – www.equalityni.org

The Equality Authority for the Republic of Ireland – www.equality.ie

ACAS – www.acas.org.uk

**Acas Helpline can be contacted:
08457 47 47 47 Monday-Friday 8am-8pm and Saturday 9am-1pm
8001 08457 474747 for Text Relay www.textrelay.org**

Labour Relations Agency in Northern Ireland – www.lra.org.uk

Labour Relations Commission in the Republic of Ireland – www.lrc.ie

Health and Safety Executive – 0151 951 4000 www.hse.gov.uk

DIGNITY AT WORK

Unite – the Union

MODEL WORKPLACE HARASSMENT, DISCRIMINATION AND BULLYING POLICY

STATEMENT

The Employer and Unite – the Union fully support the rights and opportunities of all people to seek, obtain and hold employment without, harassment, discrimination or bullying.

The Employer's policy is to provide a productive working environment free from harassment, discrimination, intimidation, bullying and victimisation. The employer is committed to ensuring that employees and workers are treated with dignity and respect.

Harassment of an individual, by any employee or worker, whether a colleague or a representative of management, whether employed directly or through an agency or sub-contractor can constitute unlawful discrimination

The Employer recognises their legal responsibilities to prevent harassment related to sex, caring responsibilities, pregnancy, marital status, race, colour, ethnic or national origin, disability, sexual orientation, age, gender identity, religion or belief and trade union membership at the workplace, and to deal effectively and quickly with any complaints that arise.

Furthermore, the Employer is committed to preventing any form of harassment that undermines equality at work, including harassment and bullying related to class, physical characteristics, employment status and harassment or bullying of ex-offenders.

A DISCIPLINARY OFFENCE

Conduct which leads to the harassment or bullying of another employee, is not acceptable. Such conduct will render the individual responsible liable to disciplinary action.

Depending on the level of harassment or bullying, disciplinary action will include formal verbal/written warnings, suspension, relocation and where necessary in the event of gross misconduct, may include dismissal.

DEFINITIONS

Workplace harassment is "unwanted conduct which is related to a relevant protected characteristic and which has the purpose or the effect of violating the worker's dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment for that worker."⁵

It is regarded as any conduct related to sex, race, colour, ethnic or national origin, disability, age, sexual orientation, gender reassignment, religion or belief, trade union membership, class, employment status, ex-offenders or any other personal characteristic that is **unwanted by the recipient**.

Harassment may be persistent or an isolated incident and may be directed towards one or more individuals. Harassment because of association and perception are also covered by this policy. The source of harassment may be a single work colleague or several colleagues, a supervisor or manager, a contractor or a client/member of the public.

⁵ EHRC Employment Statutory Code of Practice

Harassment is detrimental to an effective working environment. It can lead to:

- anger and hostility
- intimidation
- victimisation and isolation
- stress which may result in increased sickness or absenteeism
- prevention of job satisfaction and decline in work performance

Sexual harassment Sexual harassment includes unwelcome behaviour which can range from leering looks and verbal abuse of a sexual nature, displaying pin ups and other sexually suggestive pictures, objects or written materials, unwelcome touching and, in extreme cases, assault and even rape. It is defined as conduct of a sexual nature, or based on sex, towards an individual, which is unwanted by the recipient. This is unlawful under anti-discrimination law.

All forms of race discrimination are unlawful under anti-discrimination law. **Racial harassment** is an act designed to intimidate, ridicule or undermine a person by reason of their race, colour, ethnic origin or nationality. Racial harassment can range from racial 'jokes', graffiti, ridiculing or insulting and name calling because of someone's race or nationality, cartoons or pictures that degrade people of a particular racial or ethnic group, deliberate exclusion from normal workplace conversation or social events and even physical assault.

Harassment of disabled workers can take the form of attempts to undermine or intimidate people because of their mental or physical impairment and includes health issues such as actual or suspected conditions including HIV/AIDS. This is governed by anti-discrimination law. It can be patronising or offensive comments, inappropriate reference to a person's disability, unwelcome discussion of the impact of disability, communicating with a disabled person via a third party, prejudging a disabled person's capabilities, unwelcome interference with personal aids or equipment, uninvited physical contact, staring, or refusing to work with or exclusion of people with disabilities from social events or meetings.

Harassment because of age can undermine both younger and older workers and is unlawful under anti-discrimination law. This can take the form of ageist 'jokes', derogatory remarks, bullying, name calling, assumptions regarding the person's ability to learn, offensive remarks, overbearing supervision or unjust criticism, inappropriate initiations for new workers, ignoring views and opinions, exclusion or isolation and setting a person up to fail.

Homophobic harassment of lesbian, gay and bisexual workers is discrimination because of **sexual orientation** (actual or perceived and it is unlawful under anti-discrimination law). It can include offensive "banter", unwanted sexual references, spreading malicious rumours, verbal abuse, name calling, stereotyping, false allegations of misconduct, actual or threatened unwanted disclosure of sexuality, derogatory comments, lack of recognition and excluding same-sex partners from social events, intrusive questioning about a person's domestic circumstances and threatened or actual physical or sexual assault.

Harassment or discrimination against someone related to their gender identity is also unlawful, under anti-discrimination. It is unwanted behaviour related to gender identity. It can happen when a person intends to undergo, is undergoing or has undergone gender reassignment. It can include hostile and intimidating behaviour, demeaning treatment relating to the person's sex and sexual orientation, exclusion from workplace activities, refusal to share toilet and other workplace facilities, taunts, verbal and physical abuse.

Harassment because of religion or belief and non-religion or non-belief is unlawful under anti-discrimination law. It can take the form of offensive comments or 'jokes', refusal to work with a person because of their religion/belief or non religion/belief, excluding a person from social events or meetings, making assumptions about a person's religion/belief or non religion/belief, mocking practices associated with particular religions or beliefs, unfair allocation of work and intimidation.

EXAMPLES OF HARASSMENT

Physical:

- unnecessary touching, gestures or assault

Verbal:

- unwelcome remarks
- intimate/personal questions, suggestions and propositions
- threats
- abuse or name-calling
- malicious gossip
- 'jokes' or ridicule based on personal characteristics

Non-Verbal:

- offensive literature or pictures
- flags or emblems
- graffiti
- letters, notes, emails and texts
- being ignored or excluded
- differential treatment e.g. unfair allocation of work or enforcement of company rules

No form of harassment is acceptable under any circumstances in the workplace.

BULLYING

Bullying often includes threats, abuse, teasing and practical 'jokes'. It can be defined as persistent, offensive, abusive, intimidating, malicious or insulting behaviour or unfair penal sanctions which make the recipient feel upset, threatened, humiliated or vulnerable, which undermines self confidence and which may cause suffering and stress.

Bullying related to sex, race, disability, age, sexual orientation, gender identity, caring responsibilities, pregnancy and religion or belief may constitute unlawful discrimination. However, bullying in any circumstances will not be tolerated – for example of new or lower grade employees. **Bullying is a form of harassment and will be treated as such under these procedures.** The employer recognises that its civil law duties of care extend to preventing any behaviour which results in physical or psychological injury. The employer will carry out risk assessment which includes employees' exposure to violence and make arrangements including preventive measures. The employer will also provide information and training about tackling bullying and violence at work.

ORGANISATIONAL PROBLEMS AT WORK

The Employer and the Union recognise that organisational problems in the workplace can provide a workplace environment in which harassment or bullying problems can start more easily or worsen a harassment or bullying problem.

The Employer therefore undertakes to examine working conditions and review management practices to prevent harassment and bullying and if complaints of harassment and bullying are raised, with the aim to ensure that the best possible working environment is provided for all.

DUTIES OF SUPERVISORS AND MANAGERS

All supervisors and managers are responsible for eliminating harassment, bullying or intimidation of which they become aware, whether or not is brought formally to their attention. Failure to do so will be considered a failure to fulfil all of their responsibilities.

All supervisors and managers will be advised of their duty and trained on how to comply with this policy.

A minimum of one senior officer of the Employer will receive comprehensive training on the legal responsibilities of the Employer, how to prevent and eliminate harassment and bullying and how to deal with and provide guidance if such cases arise.

DUTY OF EMPLOYEES AND ALL WORKERS

All workers have a duty to comply with this policy and ensure that they treat their colleagues with dignity and respect.

In all induction training for new workers, including agency and migrant workers and work experience/training placements, the joint Equal Opportunities Agreement will be explained, including this agreement on harassment, bullying and dignity at work.

UNION REPRESENTATIVES

All union representatives shall be given sufficient paid time off to provide support and representation to members facing harassment or bullying, and to undertake union and company training on dealing with harassment and bullying cases.

Union Equality Representatives

The employer and the union agree that union equality representatives have an important role to play in preventing harassment and bullying and creating a working environment free from harassment and bullying. It is agreed that a network* of union equality representatives will be established with paid time off and facilities to carry out their role and for training purposes. Such a role may be added to an existing union representatives' role, or provide the opportunity to involve a greater diversity of union representatives. This is particularly important, for example where there are currently no women representatives or other lack of diversity. The union shall provide the names of such elected union equality representatives on their election.

*in smaller workplaces, this may be a single union equality representative

HARASSMENT AND BULLYING COMPLAINT PROCEDURE

Informal action

An employee or worker who believes that he or she has been the subject of harassment or bullying should take steps (either verbally, in writing or through a third party) to inform the harasser or the bully that their behaviour is unwelcome and ask them to stop.

A worker can gain advice and assistance regarding the harassment or bullying from:

- the Employer's officer responsible for dealing with harassment and bullying cases
- their Unite workplace representative and/or full-time officer
- their Unite equality representative and/or Unite Regional Women's & Equalities Organiser

Formal action

Any employee or worker who is being harassed or bullied has the right to complain and pursue the matter in accordance with **the agreed grievance procedure**, using the 'three-step' procedures – involving a statement (setting out in writing the grounds for action or grievance), a meeting between the parties and the right to appeal. If the harassment or bullying is a single incident and is considered serious by the employee or worker, or if the harassment or bullying is persistent, it is advised that the matter is pursued formally. The process is outlined below.

- (i) A worker who believes that he or she has been subjected to harassment or bullying should report the alleged act to his or her line manager or personnel manager
- (ii) All complaints will be dealt with quickly and in confidence. Strict time limits for the procedure shall be enforced. Employees shall be guaranteed a fair and impartial hearing

Both the complainant and the alleged harasser or the bully shall be entitled to trade union representation throughout grievance and disciplinary procedures

Depending on the nature of the alleged harassment or bullying, consideration will be given to suspending or relocating the alleged harasser or the bully for the period of the investigation and procedure

- (iii) If the investigation upholds the complaint, prompt action will be taken to stop the harassment or bullying immediately and prevent its recurrence. If relocation proves necessary, it will normally be the case that the harasser or the bully is relocated and not the complainant

Counselling

In addition to supporting union equality representatives providing listening support, where appropriate, all workers subjected to harassment or bullying shall be entitled to paid time off for confidential professional counselling. This should be arranged either through the employer or by the individual worker. The employer agrees to meet all reasonable costs as well as paid time off from work.

Protection from victimisation

All workers shall be protected from intimidation, victimisation or discrimination for making a complaint or assisting in an investigation into a complaint. Retaliating against an employee for complaining about harassment or bullying, or be a witness in the proceedings, is a disciplinary offence.

HDB(1)

Strictly Private & Confidential



UNITE HDB(1) REPORT FORM FOR SHOP STEWARDS, UNION REPS AND OFFICERS TO REPORT CASES OF HARASSMENT, DISCRIMINATION AND BULLYING IMMEDIATELY

Please use the attached checklist and Unite support form when you interview the member

1. This is to report that I have been approached about a case of :

Harassment Discrimination Bullying

Employer _____

Branch _____

2. The case is related to:

Sex Race Disability Sexual Orientation Age Trans Religion/Belief

Other (please give details) _____

3. I have been approached by:

The complainant The alleged harasser/bully

Other (please give details) _____

4. The complainant involved is: a Member Non-member

The alleged harasser/bully is: a Member Non-member

5. The date of the alleged harassment, discrimination or bullying was:

6. Action taken including details of grievance taken through employer's grievance procedure

7. Have you advised the member of the Unite Listening Support Network

Yes No

8. Proposed future action:

MEMBER'S DECLARATION

I confirm that I have been advised that a 3-month time limit (less one day) applies in a claim to the tribunal and that it is my responsibility to ensure the tribunal time limits are respected (6 months in the Irish Republic). I have also been advised that in the United Kingdom it is necessary to raise a grievance through the employer's grievance procedure before entering a claim to a Tribunal.

Signed: _____ *(member) Date:* _____

SIGNED: _____ **(Shop Steward/Union Rep/officer)**

NAME: _____

TELEPHONE/MOBILE: _____

EMAIL: _____

ADDRESS: _____

Please now send a copy of this form to:

1. **Your local Unite officer**

2. **National Officers for Equalities:**

Siobhan Endean
Collette Cork-Hurst

3. **Your Regional Women's & Equalities Organiser:**

North West	Sharon Hutchinson	0151 203 1907
North East, Yorkshire & Humberside	Sue Pollard	0113 236 4830
Midlands West	Natalia Stepnowska	0121 553 6051
Midlands East	Maureen Scott-Douglas	01332 548 400
South West	Karen Cole	0117 923 0555
South East	Sharon Wentworth	02392 824 514
London & Eastern	Mel Whitter	020 8800 4281
Ireland	Taryn Trainor	Belfast 028 90 232381 Dublin 00353 (0)1 8734577
Scotland	Elaine Dougall	0141 404 5424
Wales	Belinda Robertson	0292 039 4521

Please also refer to
"Unite Guidelines for Dealing with Harassment, Discrimination and Bullying"

Unite HDB(1) Checklist for interviewing member complaining of harassment and bullying		
		✓
1	Ensure a sympathetic approach.	
2	Recognise the importance of listening support, through providing the opportunity to speak to a Unite Listening Support Network member (contact your Regional Women's and Equalities Organiser).	
3	Confirm the confidentiality of the interview.	
4	Confirm no action will be taken without the member's consent.	
5	Make notes of the incidents and dates for your own records.	
6	<p>Explain there are legal procedures to harassment, <u>including the need to first raise a grievance</u>, and a three month time limit from the date of the incident to lodge a case in Britain and Northern Ireland (6 months in The Republic of Ireland).</p> <p>Ask member to sign the Unite HDB(1) Form declaration.</p> <p>Send HDB(1) to your Officer, Regional Women's and Equalities Organiser and National Officers for Equalities.</p>	
7	<p>Agree the way forward one or more of the following:</p> <ul style="list-style-type: none"> ● No action to be taken ● Informal approach by the union ● Formal grievance to be raised ● Legal application to be lodged ● Member to report incident to police 	
8	Confirm the union's support for members taking up cases of harassment or bullying and that they should be accompanied by a Unite representative in any investigation or hearings set up.	
9	<p>Explain the union may be requested to provide representation for the alleged harasser/bully (if a Unite member) in a disciplinary hearing.</p> <p>Confirm the absolute confidentiality which applies and that the complainant will not be accompanied by a union representative of a lower rank.</p> <p>Explain the union will not defend harassment or bullying, but will ensure fair treatment in disciplinary procedures.</p>	
10	Remind member to keep full notes of dates, time and places of any incidents relating to the harassment, discrimination or bullying.	
11	Reassure the member that Unite recognises the distress caused by harassment, discrimination or bullying and that you will ensure next steps cause the least additional stress.	
12	<p>Check you have :</p> <ul style="list-style-type: none"> ● agreed the next steps with the member ● completed Unite HDB(1) form and sent off copies <p>put the member in contact with the Listening Support Network through the Regional Women's and Equalities Organiser.</p>	

UNITE SUPPORT FORM

Member's name	Details of Harassment & Bullying
Date	
HDB(1) Form Completed	Assistance & Support Offered to Member
Yes/No	
Copies of HDB(1) form sent off	
Yes/No	
Name of alleged harasser/bully	
Effects felt by member	Action taken if any
	<p>Listening Support Network offered to member? Yes/No</p>
Result	



Respect and Dignity at Work Zone

