Promoting Dignity and Respect in the Workplace

On behalf of Screen Procedures Ireland

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Graphite HRM have been working with SPI for a number of years in an advisory capacity
Bullying, harassment and sexual harassment in the workplace

Why so topical?

Media attention
Statutory obligations
**Duties of Employers**

**Duties of employers**

- Employers should adopt, implement and monitor a comprehensive, effective and accessible policy.

- Must communicate adequately policy and procedures to all staff.

- Must provide training for employees and managers.

- Must respond and deal with complaints that are made in line with provisions set out under Code of Practice.
Vicarious liability

Harassment & Sexual Harassment

• Vicarious liability of employers;
  • Employers are liable for the discriminatory actions of their employees.

• In defence:
  • Employers must prove they took steps to prevent the employee
    - from doing that act.
    - from doing acts of that description.
Responsibilities of Employees

• Should not engage in improper conduct or behaviour that is likely to endanger his or her own safety, health and welfare at work or that of any other person.

• Should consider how the treat others, and how their behaviour can impact on others.

• Are obliged to cooperate with company policies and procedures.

NB: unless the employer has put the appropriate steps in place an employee cannot be expected to do the above
Responsibilities of Managers

- Provide good example by treating all in the workplace with courtesy and respect
- Promote awareness of the organisation’s policy and complaints procedures
- Be vigilant for signs of unwelcome behaviours and take action before a problem escalates
- Respond sensitively to an employee who makes a complaint of harassment
- Explain the procedures to be followed if a complaint is made
- Ensure that an employee making a complaint is not victimised for doing so
- Monitor and follow up the situation after a complaint is made so that the harassment or bullying does not recur.
Effects on the victim

**Effects** of bullying, harassment or sexual harassment on the victim

- Decrease in job performance and job satisfaction
- Absenteeism
- Anxiety, tension, irritation, depression
- Increased alcohol, cigarettes and drug use
- Insomnia
- Problems with weight and diet
- Illness such as migraine
- Difficulty with family and personal relationships
**Effects on the organisation**

**Effects** of bullying, harassment or sexual harassment on the organisation

- Climate of fear and resentment
- Poor morale
- Lack of trust
- Absenteeism
- Higher turnover
- Reduced productivity
- Reduced efficiency
- Divided teams and breakdown of internal relationships within the organisation
- Reputational damage / social media
- Risk of litigation
Why employees may be reluctant to take action

- Uncertain of company policy and procedures
- Embarrassment or shame
- Fear of reprisal
- Reluctance to focus attention on situation
- Fear complaint will not be believed or will be trivialise
- Fear that they will lose their job
- They don’t know who to talk to / where to go
- If the complaint is against the own / senior person fear nothing will be done
- If on a short project/ contract feel like there is no point in saying anything
- Fear that their future career could be damaged (within the industry)
Dignity and Respect at Work Policy

Prevention is better than the cure – commit to actively stamping out bullying, harassment and sexual harassment in the workplace

The purpose of the policy is to:

• Comply with legislation and codes of practice
• Show the companies commitment to the area
• Promote measures to protect the dignity of employees
• Outline unacceptable behaviours
• Outline roles and responsibilities
• Provide for a procedure for dealing with complaints
Dignity and Respect at Work Policy

*Screen Procedures Ireland* have template policies and procedures that are available for you:

- **Dignity and Respect in the workplace** – this policy outlines the appropriate resolution procedures for addressing bullying, harassment and sexual harassment

- **Sexual Harassment Prevention Policy** – this is a separate procedure to highlight the company’s commitment to having zero tolerance for sexual harassment in the workplace (handout provided)

**NB** employers are legally required to provide all employees with a copy of the policies and procedures by statutory obligation on commencement of employment
Case Law

Case – Sexual Orientation

• Heterosexual employee called “gay” won harassment claim

• In Austin v Samuel Grant (North East) Ltd, a heterosexual male employee, A, won a sexual orientation and religious belief harassment claim after repeated inappropriate remarks made verbally and by email.

  • During once incident, colleagues asked A whether or not he liked football. When A told them that he was not interested, his colleagues said “you’re gay then”.

  • A filed a grievance, which the HR director rejected, on the basis that the remarks were office banter. The company’s evidence was that this expression is “quite normal in North East England football circles”, and is treated as a joke.
Case Law

Case – Age discrimination

One-off comment about age held to be discriminatory

• In *Clements v Lloyds Banking plc and others*, the claimant, C, was an employee in his 50s. His manager, who had concerns about his performance, said to him during a conversation “you are not 25 anymore” and suggested moving him to a different role.

• C resigned and claimed age was discriminatory, showing that a one-off comment can amount to discrimination. constructive dismissal following further conduct by the bank.

• The tribunal decided that C was constructively dismissed
Case Law

Case – Race discrimination

• In *Harper v Housing 21*, the claimant, H, complained about the attitude of her line manager, J, towards her Irish nationality.

• J’s offensive behaviour included repeatedly likening H to women on the TV programme “My Big Fat Gypsy Wedding”, although J said that her comments were office banter and that she did not intend any malice.

• The employment tribunal upheld claims of direct race discrimination, racial harassment and constructive dismissal.
Case Law

Employee v retailer 2013

• Complaint of gender discrimination
• Harassed by her supervisors remarks of a sexual nature “virgin Mary”
• Spread rumours about her
• When she brought the complaint to a manager he allegedly stuck his fingers in his ears “la la la”
• Alleged she was touched inappropriate at a staff party
• Employer discriminated against her by not taking reasonable steps to prevent the behaviour
• Awarded €29,756 – maximum award of 2 years salary
Case Law

John McAteer V Tipperary County Council{DEC-E2014-045}

• Ee maintained a central part of his religion required him to speak to others about Jesus and share the Gospel with them

• Complaint was lodged by another colleague, HR asked him to desist from doing so in the office,

• The ee felt this was unfair, he continued with what he believed in

• He was brought through a full disciplinary procedure and was dismissed for what the er said was Gross misconduct
Case Law

• The Court strongly highlighted the fact that the employee was restricted from engaging in his religious practice during his lunch break. Even though the employer stipulated that the lunch break was considered working time it was the fact that no other employees in the organisation were restricted in their activities during.

• The view of the Court was that the employee was indirectly discriminated against. The employee was awarded €70,000.
Case Law

McAleenon v Autism Initiatives NI

• Subject to sexual harassment in the workplace

• Raised the issue with her but resigned because she felt they did not handle it properly

• Said she was subjected to inappropriate contact and derogatory comments about her sex life "I felt demeaned by the harasser and I felt worthless as a woman, by his comments."

• He admitted that he had touched Ms McAleenon and made comments to her, and while he claimed that it was all done "in fun and banter with no malice", he admitted that some behaviour had been "inappropriate".
Case Law

• The tribunal found that the constructive dismissal claim was bound up with the harassment complaint and thus amounted to an act of sex discrimination and was unfair.

• The Equality Commission said: "This case should remind all employers how important it is to ensure that their policies are actually being implemented and that managers take action when they become aware of problems of harassment...these policies must become part of the fabric of the organisation."
Litigation

Workplace Relations Commission / Labour Court
Constructive dismissal
   Potential of award of 2 years salary
Equality claim
   Potential of award of 2 years salary or €21,000 whichever is higher
Victimisation
   Potential of award of 2 years salary or €21,000 whichever is higher

High Court
Personal Injury claim (PIAB)
Uncapped award
Litigation

- Cost of the award (monetary)
- Legal fees
- Time to attend the hearing / preparation for the case
- Reputational damage where an award is made against the company
Litigation

• Ms Sylwia Wach v Travelodge Management Ltd – harassment on her return from maternity leave – €21,000 + €42,000 for victimisation

• Bernie Kinsella v G4S Secure Solutions (Ireland) Limited - failure to prevent discrimination in the workplace €17,000

• Barbara Johnston v St Patrick’s Guild – discrimination and victimisation €7,500
Industry Specific

Scenario 1
An employee has come forward with a complaint on the last day of their contract and made allegations about members of crew in relation to inappropriate behaviour.

What are the company’s obligations?
Industry Specific

Scenario 1

Answer

Even though the employee’s employment has ceased, the employer still has an obligation to investigate the complaint and close it off. If there are dignity and respect issue the employer has an obligation to try and change the culture by rolling out awareness training and tackling the problem.
Industry Specific

Scenario 2
Some individuals are reluctant to come forward with complaints as they feel they could be disadvantaged for future career progression due to making an allegation against the HOD.
Industry Specific

Scenario 2

Answer

It is important to have an appropriate person listed within your policy as a designated person.

By having options of people to go and talk to will reduce the risk of people feeling they have no where to turn.
Scenario 3

Two individuals have had a physical altercation on set - how is best to address this?
Industry Specific

Scenario 3

Answer

In a case where two individuals have been physically violent towards each other (or one person has been violent) the more appropriate option could be to suspend both individuals with pay to allow an full investigation under the disciplinary procedures take place.
Industry Specific

Scenario 4
An employee has come forward to say they have been subjected to discriminatory comments on social media sites.

The social media sites are not related to the production in anyway and it has been happening outside of normal working hours. What are the company’s obligations in this situation?
Scenario 4

Answer
Employers should have a social media policy
Even though the activity is happening outside of working hours, where the two individuals work together and the behaviour is effecting their working life, the employer will have a responsibility to address the issue.
Informal or formal investigation may be necessary.
Industry Specific

Scenario 5
An employee has come to you in confidence to tell you about inappropriate comments that are being made by a certain group of individuals. They do not want to make a big about the situation and they do not want to individual to know that they spoke to you.

What do you do in this situation?
Scenario 5

Answer

You have an obligation to act on this information even though the individual has asked to remain anonymous.

Team awareness training or a communication email highlighting the expected standards could be enough to put a stop to the behaviour.

Keep a record of the agreed action with the employee.
Industry Specific

Scenario 5 continued

NB: where the company feels that the allegations are so serious they can instigate an investigation.

It is important to know that where someone has an allegation against them they have a right to know who has made that allegation.
Industry Specific

Scenario 6
You have overheard comments being made that could be considered to be homophobic. No one has come to you to complaint.

What do you do?
Industry Specific

Scenario 6

Answer
You have an obligation to speak with the individual and tell them that their behaviour is not appropriate.

Give them a copy of the dignity and respect at work policy/ anti harassment / bullying/ sexual harassment policy and have it on record (email correspondence or letter) that if the behaviour continues formal action may be more appropriate.
The above scenarios are only examples and each case needs to be assessed on its own merits before advice can be taken.

It is important that advice is sought on a case by case basis and that the above answers are not taken as blanket advice.

Seek advice from SPI for issues relating to Dignity and Respect at work.
In Summary

• Be proactive rather than reactive
• Advocate for eliminating bullying, harassment and sexual harassment in the workplace
• Respond to the complaint with sensitivity
• Have clear polices in place – ensure staff are aware of expectations and standards
• Ensure people managers are trained in managing complaints under the dignity and respect at work procedure
• Do seek advice from Screen Procedures Ireland
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