# PREVENTION IS BETTER THAN CURE

## Toxic Workplace Cultures: Practical steps for preventing and dealing effectively with bullying, harassment and discrimination in the workplace.

Allegations of bullying, harassment and discrimination have been back in the headlines with a vengeance in recent weeks. Workplace culture and values are set by those at the top of their organisations and filter down, so it's even more concerning when senior individuals in government, politics and business are involved.

Dominic Raab (the former deputy prime minister) has resigned following an independent investigation into allegations against him of bullying, the politician Diane Abbott has been suspended and had the labour whip removed from her on the grounds of having made anti-semitic comments alleging that Jewish people do not face racism and Tony Danker, the former boss of the CBI was terminated following an independent investigation into allegations of workplace misconduct against him.  We have unfortunately seen this all too often with those in power believing that they are untouchable and can behave with impunity, such as Donald Trump, Harvey Weinstein, Jeffrey Epstein and Ghislaine Maxwell. Thankfully the tide is now turning.

However dealing with discrimination, bullying and harassment allegations and claims is time-consuming and expensive and there is adverse professional and personal reputational risk for the organisation and perpetrator involved, as well as personal cost in terms of adverse effect on the mental health and wellbeing of victims and loss of productivity.  So what practical steps should employers take to minimise the risk of discrimination, bullying and harassment occurring in the workplace in the first place and if it does happen, how can they deal with it quickly and effectively to prevent a toxic workplace culture from developing?

## Practical steps to prevent and deal with discrimination, bullying and harassment

- Culture – Adopt a top-down zero tolerance approach to harassment, discrimination and bullying in your organisation. Embed a speak up culture without fear of reprisals.

- Update your anti-harassment policy to ensure it expressly covers virtual sexual harassment and bullying.  This is important in light of hybrid working and opinions which are expressed online and on social media platforms. Your anti-harassment and bullying policy should explicitly apply to video calls, WhatsApp, instant and text messages or any other online or virtual platform.

  Employees should be required to communicate only on platforms that are subject to the employer's monitoring procedures. Victims of bullying, harassment or discrimination should be encouraged to take screen shots or photos of inappropriate messages and communications which can be used as evidence in internal investigations, disciplinary procedures and any subsequent litigation.  For deterrent effect make it clear that emails and instant messaging conversations on work devices may be preserved and used as evidence.

  Employees should not give out personal contact details and should only communicate on work mobile phone numbers and work email addresses.

- Draw your anti-harassment policy to the attention of third party customers and suppliers, for example, include anti-harassment provisions in your terms of conditions of business with third parties.

- Conduct regular training at all levels throughout your organisation, including during the induction process. Ensure policies are communicated regularly and appropriately to improve awareness of their effectiveness. Update policies regularly to take account of legislative changes and best practice guidance.

- Treat all complaints seriously and handle them promptly. Victims often believe it's their fault.  It takes courage to speak up.  Delays in dealing with complaints can lead to the victim believing that the employer is not taking their complaint seriously, which means they may seek redress outside their employer by reporting it to the police or by going to the media, such that the employer loses control of the situation.  Delay can also impact adversely on the victim's mental health leading them to be signed off work sick.

- Take steps to remove the stigma and shame which puts victims off reporting. Make it clear that sexual harassment, bullying and discrimination happens to staff at all levels of seniority, all ages and across all genders and sexual orientations.

- Train managers how to spot the warning signs and how to deal with sensitive issues. Warning signs can include increased sickness absence, lack of participation in team meetings or reluctance to work with a particular individual.

- Appoint workplace champions who receive specialist training in the sensitive issues involved in discrimination, bullying and harassment. Be aware that victims may only want to report sexual harassment to someone who is the same gender as them.

- Publicise reporting procedures which need to be easily accessible and user friendly.  Display anti-harassment, anti-discrimination and anti-bullying policies in prominent public places and ensure they are available online. They could be put on an app which is automatically installed on all company devices and which also includes access to a confidential reporting hotline.

- Stress that reporting procedures are not just for victims of discrimination, bullying and harassment. Anyone who observes the inappropriate conduct of others is under a duty to report it and will be protected from victimisation. Stress the importance of managers intervening when they witness inappropriate conduct, so that a culture of banter, bullying or harassment does not grow inadvertently. The number of reports from bystanders is a good way of measuring the practical effectiveness of your reporting procedures.

- Track the progress of victims who report sexual harassment, discrimination and bullying and witnesses in investigations to ensure that they do not suffer victimisation or detrimental treatment.

- Use anonymous staff surveys and exit interviews to monitor patterns of bullying, harassment or discrimination or particular areas/departments where harassment, bullying or discrimination is at increased risk of occurrence and deal with it swiftly to stamp it out before it becomes pervasive.

- Review settlement agreements at board level to monitor effectively the number of discrimination, harassment and bullying claims.  Consider whether confidentiality provisions are required in any settlement agreement. Non-disclosure agreements ('NDA's') are under increased scrutiny because they deter victims of harassment and discrimination from speaking out.  Consider whether they are really necessary.

  Remember that confidentiality provisions in settlement agreements must have carve-outs for protected disclosures under whistle-blowing legislation, which includes breaches of legal obligations if the public interest element is satisfied, so they may not be effective to prevent employees from raising issues of discrimination, harassment and bullying externally.

- Adopt a Code of Conduct. Employees should be involved in drafting the Code of Conduct which should be a values-based charter which actively promotes a working environment in which everyone is treated with dignity and respect and respects cultural and religious differences.  If employees buy into the Code of Conduct, they are more likely to act in accordance with it and take positive steps to ensure that others adhere to it too.

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