



## **XpertHR Weekly Podcast**

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- Susan Dennehy: Hello and welcome to XpertHR Weekly with me, Susan Dennehy. This is National Anti-Bullying Week. The focus is on schools but bullying can take place in the workplace and can be costly for employers in terms of reduced productivity, increased absence and increased staff turnover.
- With me this week to discuss bullying and what employers can do to deal with bullying issues, including prevention in the workplace, is Susie Munro, Senior Employment Law Editor. Good morning Susie.
- Susie Munro: Hi Sue.
- Susan Dennehy: There's no legal definition of bullying but most people think they know what it is. But what is bullying? [0:00:41.4]
- Susie Munro: So yes, you're right, there's no legal definition. And it can be difficult because what some people see as bullying, others might see as just their colleagues having a bit of fun. Or if it's a line manager it could be seen as robust management. So it's important to have a clear organisational approach to bullying and what it is and how to tackle it. But generally, bullying is accepted as being behaviour that's intimidating, humiliating, aggressive or offensive. And there's often an imbalance of power involved. So for example, it could be an imbalance in seniority. There could be someone in a management position who's bullying a subordinate or there could be something about the particular person who's being bullied that makes them particularly vulnerable. It could be a group of people who are ganging up on an individual or it could be just one person targeting one other person.
- Susan Dennehy: And it could cover all kinds of things and it can be quite subtle, can't it? From something obvious like verbal abuse or physical assault to something more subtle, like constantly undermining someone else or excluding them from activities? [0:01:42.9]
- Susie Munro: Yes. So things like not passing on information that enables them to do their job or ignoring their contributions in meetings or to a particular project, spreading malicious rumours about them. And there's also potential for it to be different if it's the line manager, so it could be things like giving somebody an unfair workload or giving them all the most unpopular tasks, unfairly criticising them. And it's probably more difficult to know, in that situation, if it's bullying or if it's just reasonable instructions that the employee doesn't like or if they're particularly sensitive to the way that they're being asked to do things.

Susan Dennehy: And bullying and harassment are often two terms that are put together. But unlike bullying, harassment does have a specific legal meaning, doesn't it? [0:02:25.8]

Susie Munro: Yes. There's a legal definition of harassment. That's unlawful under the Equality Act, so that's part of discrimination law. So harassment is basically bullying that's related to one of the protected characteristics under the Equality Act. So someone who's being bullied where it's connected to their race, sexual orientation, disability or age, or one of the other protected characteristics, they've got a standalone claim at an employment tribunal. They can claim for harassment. So the definition of harassment is 'unwanted conduct related to a relevant protected characteristic that has the purpose or effect or violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them'.

But there is often confusion about the difference between harassment and bullying. It's important to remember that you can only claim harassment if there's a connection to one of the protected characteristics, say race or disability. It doesn't cover general bullying.

Susan Dennehy: So unlike harassment, there's no standalone claim for bullying. What legal redress does someone have who thinks they're being bullied? [0:03:33.6]

Susie Munro: Well it's difficult for somebody in that situation because they can't just bring a claim that they're being bullied. Ultimately what they can do is resign and claim constructive unfair dismissal but things will have had to have got to a point where they feel that they've got no option but to leave and employers will want to avoid things getting to that stage.

Susan Dennehy: How should employers deal with bullying? It can be quite difficult to deal with, can't it, but it's important to take those steps. [0:03:58.6]

Susie Munro: Yes. So you need to be able to deal with grievances about bullying fairly. You need the procedures in place to be able to deal with those issues, resolve those issues when they do arise.

Susan Dennehy: And can these issues be dealt with under the normal grievance procedure or is it best for employers to have a separate procedure for dealing with these sorts of complaints? [0:04:17.1]

Susie Munro: One approach is to have a separate policy that specifically deals with complaints of bullying. We've got a model policy on investigating claims of bullying and harassment on XpertHR. But the important thing really is that you've got procedures in place and you have got some kind of policy that does enable the organisation to deal fairly with a grievance about bullying. So that could either be under the grievance policy or it could be under a separate bullying policy, as long as it does get applied consistently.

So as well as having procedures in place to deal with grievances when they do arise, it's also important to have a proactive preventative approach to prevent bullying from taking place and prevent those grievances from being raised in the first place.

Susan Dennehy: And how would that work? [0:05:05.2]

Susie Munro: So you want to create a culture where respect and dignity are valued and people feel able to discuss issues and conflict informally with their managers and colleagues, and to have the confidence that if they do raise issues it's going to be dealt with seriously. So an important part of that is having the policy in place, making sure that everyone's aware of it and that it's applied consistently. But you don't want to just rely on individuals bringing grievances because that's generally only going to happen when things have got close to intolerable for them.

So steps that you can take include things like setting up a confidential helpline or having a separate reporting procedure in place to deal with allegations of bullying. And through that, employees could get advice and support from somebody who's been trained in conflict management of that kind. And steps like that, they can obviously help to deal with problems when they do arise, but it could also have a deterrent effect to prevent bullying from taking place because if you've got a special procedure like that, it sends a message to potential bullies that it's something that the organisation takes seriously and it's not going to be an accepted part of the culture.

Susan Dennehy: Obvious things like not turning a blind eye to sexist, racist, ageist, homophobic comments or behaviour and creating an atmosphere where harassment like that is seen as completely unacceptable in a workplace is essential, isn't it, to avoid liability? [0:06:27.1]

Susie Munro: Yes, so that's important. It's a fundamental part of creating a positive culture. If there are things like that going on, then the employer really needs to make sure that there's a prompt response to that.

In terms of creating a more positive culture and taking a preventative approach, there's a lot of guidance on organisational culture and values in our good practice manual. So we've got a section on bullying that deals with this and it looks at cultures and practices that allow bullying to thrive and how to tackle these and how to create a more positive workplace culture.

Susan Dennehy: That's very important, creating the right workplace culture, and line managers will have a very important role to play here, won't they? [0:07:07.6]

Susie Munro: Yes. Managers need to lead by example. So if there are managers who've got a bullying style, then that needs to be addressed by the organisation through training and coaching because that kind of intimidatory style probably isn't going to be the most effective method of getting the best out of a team. But also it might set a tone, so bullying might be seen as acceptable within the organisation.

So line manager competencies should focus on their people skills and the organisation really needs to focus on recruiting people into managerial roles who've got those people skills that create the culture that they're aiming for. So that would be people with a collaborative management style, people who can consult with and listen to their teams, and also people who have an awareness of the dynamics within their teams, people who can recognise if there's someone who's being excluded for example, or someone who's behaviour

could be seen as bullying. Managers also need to be confident in dealing with bullying, but also in dealing with performance and conduct issues themselves so that they're not perceived as being bullying themselves.

Susan Dennehy: So having clear, effective performance management procedures in place is important to avoid situations where an employee feels that he or she is being unfairly singled out by the manager? [0:08:25.8]

Susie Munro: Yes. Performance management, if it's handled insensitively or inappropriately, could feel like bullying to somebody who's on the end of it, so they could think that there's excessive work monitoring or that errors are being highlighted without constructive support being given. And that could feel like bullying. So having managers who've got good performance management skills and having a clear performance management procedure in place is important. Also obviously that that procedure is being applied consistently.

Susan Dennehy: There are other ways in which organisations can try to identify where there might be a problem, rather than waiting for individuals themselves to complain. What could employers look out for? What are the signals that there may be a bullying problem? [0:09:09.3]

Susie Munro: So organisations can use data on absence levels and turnover. High levels obviously won't always indicate a problem with bullying. There could be all kinds of other explanations. But employees who feel that they're being bullied will often feel unable to face coming into work so they'll probably have higher sickness absence levels. And teams where there's a bullying manager may well have a higher turnover than other teams. So keeping an eye on the data, looking for explanations for unusually high absence or turnover could uncover a problem. And things like exit interviews can help here, if there is particularly high turnover in a particular team.

Susan Dennehy: And what if things do go wrong? [0:09:50.3]

Susie Munro: So if there is an allegation of bullying, it's important first of all to investigate that allegation. It might be possible to deal with it informally but if not then the grievance procedure needs to be gone through fully, so evidence needs to be obtained from witnesses and there would need to be a hearing. The person who is carrying out the investigation and the person who is conducting the grievance hearing, they need to have particular skills, so things like being able to be objective, open questioning, active listening. We've got a lot of practical guidance on how to conduct grievance investigations and interviews and hearings in our good practice manual, in the section on handling grievances, so I'd refer anybody who's actually involved in this to have a look at that.

Susan Dennehy: And what are the potential outcomes of a grievance for bullying? [0:10:41.9]

Susie Munro: So if the grievance isn't upheld, it might be necessary to take some kind of reconciliatory action because both the person who's been accused of bullying and the person who raised the grievance might find it difficult to move on and get back to their working relationship.

So the employer should think about what support might help in that situation.

If a grievance wasn't upheld and it was clearly false and malicious, then disciplinary action against the complainant might be appropriate.

But if the allegations are found to have some merit, then mediation could be an option. It won't be appropriate in all cases. Particularly where bullying is involved, mediation isn't always going to work. But say, for example, there's evidence that the bullying was unintentional and that it wasn't malicious, it might be appropriate. Importantly, both parties would have to agree to mediation for it to be effective.

One outcome of the grievance or mediation could be to move either the victim or the bully to a different role or location, with their agreement, so that they don't have to have contact with each other. Or you could change the reporting line if it involves a line manager. But it's important to be aware that this won't necessarily resolve the issue if the bullying behaviour is allowed to continue. So there might be other people who are just putting up with it and not complaining.

Susan Dennehy: So disciplinary action will often be more appropriate if the allegations are upheld? [0:12:02.6]

Susie Munro: Yes. If a grievance procedure concludes that the complainant has been bullied, the employer can take disciplinary action against the perpetrator. So they'd need to go through the disciplinary procedure, hold a hearing and really consider the evidence to decide what would be an appropriate sanction. And that could be dismissal in serious cases.

But really, whatever the outcome of the grievance, it might be necessary for there to be some kind of support for those people involved. So employers need to consider what's appropriate. They might need to do some kind of team building for the people who've been involved and particularly for the person who's been the victim of bullying – they might need some kind of counselling to be able to rebuild their confidence in the organisation.

So I think the main message is that employers really need to be thinking about how to prevent this kind of thing from happening in the first place and really focus on building that kind of positive workplace culture.

Susan Dennehy: So I think your main message is prevention is better than cure? [0:12:59.5]

Susie Munro: Yes, that's right.

Susan Dennehy: So Susie, you've covered some of the resources already. Do you mind just recapping on what those resources are? [0:13:05.4]

Susie Munro: Yes, so I think the best place for people to go is the good practice manual. We've got a section specifically on bullying but also there's useful content in there specifically about handling grievances and also disciplinary action. We've also got a line manager briefing on bullying and harassment and we've said that line managers have got

a really important role to play here. Also we've got model policies on dealing with harassment complaints and on investigating claims of bullying and harassment.

Susan Dennehy: Thank you very much, Susie.

Susie Munro: Thanks, Sue.

Susan Dennehy: That wraps up our look at bullying for this week and that brings us to the end of this week's XpertHR Weekly, which you've been listening to with me, Susan Dennehy. We're back again next week but until then, it's goodbye from us.