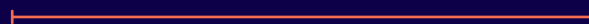




DIGNITY AT WORK TOOLKIT



Prevention, Intervention, and Resolution
of Bullying, Harassment and Sexual Harassment
for Legal Workplaces





DIGNITY AT WORK TOOLKIT



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November 2022



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SECTION

1

INTRODUCTION



INTRODUCTION

“Since the release of the Dignity Matters Report in 2021, the Law Society has been committed to working collaboratively with members and trainees to action recommendations to respond to and prevent dignity at work issues.”

Following publication of the International Bar Association (IBA) “Us Too?”¹ Report, a motion was passed at the Law Society Annual General Meeting 2020 that the Law Society would commission a profession wide survey in similar terms to that carried out by the IBA. The Law Society appointed independent external consultant, Crowe, to deliver the Dignity Matters survey to enquire about solicitors’ and trainees’ experience of work environments in Ireland. The resulting Dignity Matters Report² mirrored findings from the “Us Too” Report that indicated unacceptably high levels of bullying, harassment and sexual harassment. These findings highlighted the need for a substantial response to create sectoral culture change.

Since the release of the Dignity Matters Report in 2021, the Law Society has been committed to working collaboratively with members and trainees to action recommendations to respond to and prevent dignity at work issues. In March 2022, Law Society Psychological Services was established with Dignity at Work at the core of its long-term, strategic ambitions. The Service actions projects and supports throughout six stages of the legal lifecycle to help build safe, healthy and high functioning workplace cultures.

The Law Society Dignity at Work Toolkit was created with expert guidance to improve knowledge and awareness of the issues reported. It provides practical information, resources and trainings to support the legal profession to achieve sustainable change and to ensure safe, healthy and respectful workplaces. All information contained in this Toolkit is intended to be used as a guide to prevent and respond to dignity at work issues. It is not a replacement for legal advice nor a legally binding document.

¹Us Too? Bullying and Sexual Harassment in the Legal Profession Report, International Bar Association, 2019

²Dignity Matters, Law Society of Ireland, Crowe, 2021.

SECTION

2

WHAT PSYCHOLOGY OFFERS WHEN FACED WITH BULLYING, HARASSMENT AND SEXUAL HARASSMENT



**DIGNITY
AT WORK
TOOLKIT**

- Understanding Human Behaviour
- Start from Where You Are
- Beginning a New Kind of Conversation at Work
- What a Healthy Workplace Offers
- Supporting Colleagues
- Help is at Hand



Adopting a psychological lens is a powerful way of understanding the complexity of human behaviour. It allows us to slow down and be curious; to reflect on the hidden or unconscious meaning of communication and actions, before forming a considered and appropriate response.

Problem behaviours such as bullying, harassment and sexual harassment at work are hugely disruptive. Their impact can reverberate across a team and indeed a whole organisation; following people into their personal lives and eroding mental health and wellbeing.

For those tasked with responding in the workplace, such as senior professionals, the provocative nature of such behaviours has the potential to evoke equally problematic psychological responses. These can include moving too quickly - before full facts are established; or conversely, becoming paralysed - and avoiding or ignoring the problem; or, alternatively being drawn into collusion; or, perhaps most worryingly scapegoating or blaming those people who are themselves already feeling isolated or are the targets.

However, with some psychologically-informed reflection, coupled with effective planning, an organisation, team or individual can be equipped to respond effectively and appropriately.

START FROM WHERE YOU ARE

Organisations globally are undergoing seismic changes in the wake of the pandemic. The reality of longer-term hybrid working alongside economic uncertainty and the pressure to attract and retain talent is proving immensely challenging. However, this time of flux affords a unique opportunity for a re-think; starting again from wherever you are and building the team or choosing the workplace that fits best for you.

BEGINNING A NEW KIND OF CONVERSATION AT WORK

Creating the optimal conditions for a healthy workplace is the best insulation against bullying, harassment and sexual harassment. Psychologically informed questions can be a good starting point for a new kind of conversation.

What is really going on?

- How much do you know about the lived experience of problematic behaviour in your own organisation? This is powerful data that, if safely and appropriately gathered, offers insights that can transform an organisation/team.

“Creating the optimal conditions for a healthy workplace is the best insulation against bullying, harassment and sexual harassment.”

“Experiences such as bullying, harassment and sexual harassment are serious and complex. They add an emotional and psychological load that should not be managed alone.”

- What might be motivating challenging behaviour in the workplace? It is important to seek out the deeper roots/sources of any acting out in an organisational setting.
- Is it possible to separate the individuals involved from a cultural issue within the profession or a particular team or organisation? Both will need to be addressed if the response is to be enduring.

HOW STRONG IS THE SCAFFOLDING?

- How intent is this workplace on creating a safe and inclusive environment for all? This needs to go beyond policies and extend to developing a deeper knowledge of people and of organisational dynamics.
- Is there openness/ongoing review of the impact of the prevailing culture? Managing heavy workloads, tight timeframes, demanding business models requires lots of psychological support and scaffolding!
- What protective ‘people factors’ are in place to mitigate against the human cost of this work?
- Are there suitable mental health and wellbeing interventions to address early warning signs should they emerge?

WALKING THE TALK

- What are the consequences for challenging behaviour?
- How transparent and well used is any reporting and intervention process that exists?
- Does senior leadership model a commitment to a healthy workplace?
- Are people consulted across all levels of the organisation when having conversations like this?

The answers to such questions will provide a solid basis from which to start a genuine conversation about bullying, harassment and sexual harassment.

WHAT A HEALTHY WORKPLACE OFFERS

Workplaces that are psychologically robust value people as they are and view difference and (inevitable) limitations as opportunities for growth and development. They are places that reward consideration for others, that take an interest in individual progress - that goes beyond remuneration or purely professional advancement.

Some of the following factors are in place in such environments:

- Regular affirmation of effort and progress
- Mentoring/supervision/coaching as part of the fabric of the workplace, particularly in times of transition/challenge
- Opportunities to engage in group/one to one reflective practice

- Leadership training that deals specifically with managing challenging behaviours
- Counselling and/or Mental Health First Aid
- Accountability
- Reporting Structures
- Regular one to one/small group check-ins

All of these factors help foster psychological safety, dilute toxic competitiveness and allow a more collegial culture of care and consideration to be built over time. This in turn will ensure higher productivity, less attrition and stronger, more impactful professionals.

SIGNS TO LOOK OUT FOR IN YOURSELF AND IN YOUR COLLEAGUES

It is important that we are vigilant to the human cost of professional life. Burn-out is a common experience when working at a fast pace without adequate self-care or the appropriate scaffolding of supports at work. Experiences such as bullying, harassment and sexual harassment are serious and complex. They add an emotional and psychological load that should not be managed alone. Paying close attention to changes in your own behaviour can flag gradual or even rapid decreases in mental health and wellbeing.

“Contact LegalMind on 1800 81 41 77 for 24/7 in-the-moment support. Visit www.lawsociety/legalmind for full details.”

HOW TO SUPPORT A COLLEAGUE EXPERIENCING CHALLENGES IN THE WORKPLACE

LegalMind is an independent, confidential and subsidised mental-health support available to Law Society members, practicing certificate holders and post PPC II trainees. Psychological and therapeutic supports are available on many aspects of personal and professional life. It now has specialist support in relation to preventing or resolving a dignity at work issue.

HELP IS AT HAND

None of this is easy, nor can changes be made without assistance, support and training. Law Society Psychological Services is now available throughout the legal lifecycle. Alongside this Dignity at Work Toolkit, our team of psychotherapists and organisational development psychologists offer training, support and resources to assist you and your team or organisation. We look forward to collaborating with you to build a healthy culture right across the legal profession.



To find out more please email ps@lawsociety.ie

SECTION

3

THE LAW



DIGNITY AT WORK TOOLKIT

LEGAL OBLIGATIONS AND RESPONSIBILITIES

- What is Dignity at Work (DAW)?
- Applicable DAW Legal Frameworks – An Overview
- Employer’s Duty of Care
- The Difference Between Bullying, Harassment and Sexual Harassment
- A Closer Look at Bullying and Harassment:
 - What is Bullying?
 - Awareness of Cyberbullying
 - What Is Harassment and Sexual Harassment?
- Vicarious Liability
 - Vicarious Liability: Bullying
 - Vicarious Liability: Harassment and Sexual Harassment
- What Does “In the Course of Employment” Mean?
- “Reasonably Practicable” Steps Defence
- Role of the Health and Safety Authority (HSA) and Workplace Relations Commission (WRC) in DAW Matters

“Employers, employees and other interested parties, such as clients and suppliers of goods and services, can work together to create a culture of respect in the workplace.”

WHAT IS DIGNITY AT WORK (DAW)?

Dignity refers to the inherent worth of every human being. Employee dignity refers to how people treat each other in interpersonal relationships. Organisations are required to protect the wellbeing of employees, including their dignity. Dignity at Work or DAW is a term used to describe how we should treat colleagues in the workplace, including respect for their values, qualities and differences. It is a term used to describe the act of providing employees with an environment free from bullying, harassment, and sexual harassment.

In this publication, DAW will be used as a catch all phrase to collectively refer to workplace bullying, harassment and sexual harassment. The term “harassment” also includes sexual harassment, unless otherwise specified.

APPLICABLE DAW LEGAL FRAMEWORKS – AN OVERVIEW

The key pieces of legislation underpinning DAW matters are the:

- [Safety, Health and Welfare at Work Act 2005 \(SHWAW Act\)](#); and
- [The Employment Equality Acts 1998 – 2021 \(EEAs\)](#)

There are also two codes which provide practical and accessible guidance for employers and employees regarding DAW matters:

- [The Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work](#) jointly published by the Health and Safety Authority (HSA) and the Workplace Relations Commission (WRC) (the Bullying Code); and
- The Irish Human Rights and Equality Commission’s (IHREC) [Code of Practice on Sexual Harassment and Harassment at Work](#) (the Harassment Code)

While these codes are not legally binding, they are admissible as evidence in any proceedings before the Workplace Relations Commission (WRC), Labour Court or any other court.

EMPLOYER’S DUTY OF CARE

Employees are protected from bullying, harassment or sexual harassment in the workplace. Section 8 of the SHWAW Act provides that employers have an obligation to provide a safe place of work which includes a workplace free from bullying. The EEAs effectively provide similar protections from harassment and sexual harassment in the workplace.

9

protected discriminatory grounds: gender, marital status, family status, age, disability, sexual orientation, race, religion, and membership of the Traveller community



“repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could be reasonably regarded as undermining the individual’s right to dignity at work”

The Difference Between Bullying, Harassment and Sexual Harassment

Even though the terms bullying and harassment are often used interchangeably, the law makes a clear distinction between them. Whereas harassment is an act which subjects a person to unwanted conduct on any of the nine protected discriminatory grounds gender, marital status, family status, age disability, sexual orientation, race, religion, and membership of the Traveller community; the EEAs do not apply to a generalised bullying situation which has no link to the discriminatory grounds. Furthermore, the definition of bullying refers to “repeated inappropriate behaviour” and specifically excludes a single event. There is no similar requirement in the definition of harassment or sexual harassment in the EEAs. Therefore, a single act of harassment or sexual harassment can breach the EEAs.

A CLOSER LOOK AT BULLYING AND HARASSMENT:

What Is Bullying?

The Bullying Code retains the definition of bullying contained in previous codes, as being:

“repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could be reasonably regarded as undermining the individual’s right to dignity at work”

This definition should be read in line with the 2017 [Supreme Court decision in Ruffley -v- The Board of Management of St. Anne’s School](#)¹. The Supreme Court decision overturned the decision of the High Court which resulted in the highest amount ever awarded in a bullying claim and an apparent broadening of the definition of bullying. In its decision, the Supreme Court distinguished between “classic” bullying and breach of fair procedures.

Significantly, the Court found that Ms Ruffley’s treatment during the disciplinary process did not constitute an intention to destroy her dignity at work and held that while the disciplinary process “was clearly defective”, a breach of fair procedures does not, in and of itself, constitute “bullying”. O’Donnell J noted that in order to be considered workplace bullying, “conduct must be repeated, not merely consist of a number of incidents; it must be inappropriate, not merely wrong; and it is not enough that it be inappropriate and even offensive: it must be capable of being reasonably regarded as undermining the individual’s right to dignity at work”.

Under the definition, all four elements must exist for behaviour to be considered bullying. It must be

1. repeated;
2. inappropriate;
3. workplace connected, i.e. at the place of work and/or in the course of employment; and
4. “reasonably regarded as undermining the individual’s right to dignity at work”.

¹Ruffley -v- The Board of Management of St. Anne’s School [2017] IESC 33

The Bullying Code elaborates on these elements describing bullying in terms of “seriously negative targeted behaviours”, to “undermine their esteem and standing in a harmful, sustained way”. A pattern and trend must be involved so that a reasonable person would regard such behaviour as “clearly wrong, undermining and humiliating”.

It is evident from both the Bullying Code and the Ruffley case that it is not sufficient for the behaviour to merely be repeated and inappropriate. The inappropriate nature of the alleged behaviour must meet a certain minimum threshold if it is to constitute bullying.

This range of behaviours could include:

- exclusion with negative consequences;
- verbal abuse or insults;
- being treated less favourably than colleagues in similar roles;
- belittling a person’s opinion;
- disseminating malicious rumours, gossip or innuendo;
- socially excluding or isolating a person within the work sphere;
- intrusion – pestering, spying or stalking;
- intimidation/aggressive interactions;
- excessive monitoring of work;
- withholding information necessary for proper performance of a person’s job;
- repeatedly manipulating a person’s job content and targets;
- blaming a person for things beyond their control;
- use of aggressive and obscene language;
- other menacing behaviour.

The Bullying Code also provides guidance on what is not bullying and lists a number of examples, such as:

- offering constructive feedback;
- strongly expressing differences of opinion; and
- ordinary performance management.

The Bullying Code notes that while disrespectful behaviour, conflicts and relationship breakdowns are not ideal in the workplace, they do not automatically reach the “adequate level of destructiveness” to be considered bullying.

What Is Cyberbullying?

It is important to be aware that bullying or harassment can include the use of social media or online tools in connection with work. Bullying doesn’t have to happen face-to-face. It could even include employees’ actions in the metaverse. Employees should be aware that all of their actions, including those on instant messaging tools, over email and on social media, must be respectful and appropriate and that bullying or harassment using social media, instant messaging, email or other online tools is not tolerated.



“sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature. In both cases, it is defined as conduct which has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person”

What Is Harassment and Sexual Harassment?

According to the Irish Human Rights and Equality Commission (IHERC) guide to Sexual Harassment and Harassment in the Workplace, the EEAs define harassment as unwanted conduct which is related to any of the nine discriminatory grounds. Further IHERC states that “sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature. In both cases, it is defined as conduct which has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person”.²

Under the EEAs, sexual harassment and harassment of an employee (which includes agency workers and trainees) in the workplace is against the law. This includes sexual harassment and harassment by:

- co-workers;
- the employer; and
- clients, customers or other business contacts of the employer, including anyone the employer could reasonably expect the worker to come into contact with.

In contrast to the definition of workplace bullying, the behaviour does not need to be repetitive to be considered harassment or sexual harassment. The definition also includes both subjective and objective elements. It does not matter whether the intent behind the behaviour was to violate a person’s dignity and create an intimidating, hostile, degrading, humiliating or offensive environment for the person. There also needs to be consideration of how the person perceives the behaviour.

VICARIOUS LIABILITY

Vicarious liability is the legal concept that an employer can be held liable for the unlawful acts of an employee.

Vicarious Liability – Bullying

Employers may be held vicariously liable for bullying acts by their employees. This is set out in case-law and has a complex history in personal injury claims in particular. One of the bases for vicarious liability in the context of bullying is the obligation under Section 13 of the SHWAW Act that employees have obligations not to engage in improper conduct or other behaviour that is likely to endanger the employee’s safety, health and welfare at work or that of any other person.

Vicarious Liability – Harassment and Sexual Harassment

Section 15 of the EEAs sets out the concept of an employer’s vicarious liability in relation to harassment. It states that any discrimination, harassment or sexual harassment by an employee in the course of their employment is treated as also done by their employer, regardless of whether it was done with the employer’s knowledge or approval.

²Sexual Harassment and Harassment in the Workplace, [IHERC Website](#)

This is quite a broad concept of statutory employer liability and has potentially far-reaching consequences. It also extends to the acts of someone acting as an agent with authority of an employee in the course of their employment. This can include acts by agency workers or self-employed persons, depending on the particular circumstances.

What Does “In the Course of Employment” Mean?

With regard to an employer’s vicarious liability in DAW matters, an important point is that employers can be liable for the actions of their employees, if the act was done at the place or work or in the “course of employment”.

Whether an act of bullying, harassment or sexual harassment has taken place at work or in the course of employment will depend on the particular facts. In many cases it is clear that the act took place in the workplace or in the course of employment, but in today’s working world with work life, home life and social life being much more interconnected, as well as interactions on social media, it can be difficult to identify whether an act has taken place in the course of employment or at the workplace or not.

“Reasonably Practicable” Steps Defence

Employers can defend a claim for vicarious liability for the actions of its employees if the employer can show that it took “reasonably practicable” steps to prevent the employee from doing that act, or acts of that description (section 15 (3) EEAs).



When seeking to rely on this defence, the courts have consistently emphasised the need for employers to do the following:

- (i) Have a DAW policy in place which sets out what bullying, harassment and sexual harassment is; that it is not tolerated; and the consequences for not complying with the policy;
- (ii) Have a clear complaint procedure (to include an informal complaint procedure) set out in the policy so that employees know how to raise complaints of DAW matters to their employer;
- (iii) Ensure that complaints are dealt with fairly and are not ignored;
- (iv) Provide training to employees on the policy;
- (v) Explain the policy to employees, provide a copy (keeping a record of this of communication) and ensure that it is easy for employees to access the policy; and
- (vi) Promote a workplace culture where behaviours which amount to bullying, harassment or sexual harassment are not tolerated.

The codes provide lots of helpful and practical guidance for employers. For example, the Harassment Code sets out that it can be practicable for organisations depending on size and other factors, to designate a champion at a senior level to advocate for a diverse culture free of harassment where all employees feel respected.

ROLE OF THE HSA AND WRC IN DAW MATTERS

The Harassment Code sets out that employees can report a complaint of bullying to the HSA. If the HSA determines that the employer has failed to act reasonably, it can issue enforcement action. This can range from verbal or written advice to an improvement direction or notice - or even sending a file to the Director of Public Prosecution for a decision on whether the employer should be prosecuted for failing to protect employees concerned from bullying.

The WRC can provide workplace mediation or employees can bring a trade dispute complaint to it under the Industrial Relations legislation. Both the employer and employee must consent to mediation or a trade dispute complaint. Any recommendation as an outcome of a trade dispute complaint is not binding on the parties.

SECTION

4

PREVENTION, INTERVENTION AND RESOLUTION



DIGNITY AT WORK TOOLKIT

A THREE-PRONGED APPROACH TO ANTI-BULLYING AND HARASSMENT EFFORTS

- Prevention
 - Fostering a Positive, Healthy Workplace Culture
 - An Effective DAW Policy
 - DAW Policy: Key Elements
- Intervention
 - Raising Awareness
 - Intervention: Training
 - International Bar Association: Bullying and Sexual Harassment Training
- Resolution
 - Prompt and Effective Resolution of Complaints
 - What Does an Effective Complaints Procedure Look Like?
 - Follow-On Steps and Preventing Reoccurrence

“The purpose of a policy is not simply to prevent unlawful behaviour but to encourage best practice and a safe and harmonious workplace where such behaviour is unlikely to occur.”

PREVENTION: FOSTERING A POSITIVE, HEALTHY WORKPLACE CULTURE

Prevention certainly is better than a cure. This principle underpins both the codes by placing an obligation on the employer to establish positive workplace environments, free from bullying, intimidation, harassment, sexual harassment and ongoing negative behaviour.

Both codes, as outlined in [Section 3](#) of the DAW Toolkit, identify the role of the organisational culture as a key player in prevention. Organisational culture is defined as the shared norms, values, and beliefs within an organisation.¹ Good leadership, proper communication and staff training, and the resolution of complaints in a prompt, supportive, effective and fair manner are all aspects of a positive organisational culture.

Strategies to create and maintain a working environment in which the dignity of employees is respected are most effective when jointly agreed. Employers, employees and other interested parties, such as clients and suppliers of goods and services, can work together to create a culture of respect in the workplace. With regard to harassment in particular, the subjective nature of the manner in which a statement or action may be perceived should be communicated to all policy subjects.

Organisations should attempt to understand the nature and source of bullying/harassment and the characteristics of the context that enable a particular form of abusive behaviour. The introduction of a DAW policy must be reflected in behaviours from organisational leaders who put into practice the behavioural expectations required of others, and who act on complaints or concerns raised by employees. Professional bodies can lead the way in the development of codes of conduct, but it is the organisational leadership which must set the tone.²

PREVENTION: AN EFFECTIVE DAW POLICY

The purpose of a policy is not simply to prevent unlawful behaviour but to encourage best practice and a safe and harmonious workplace where such behaviour is unlikely to occur. A policy will be more effective if linked to a broader equality policy and so it is common practice for employers to have an overarching DAW Policy which deals with equality, discrimination, harassment and bullying.

¹ Patterson, M. G., West, M. A., Schackleton, V. J., Dawson, J. F., Lawthom, F., Maitlis, S., Robinson, D. L., & Wallace, A., M. (2005). Validating the organizational climate measure: links to managerial practices, productivity and innovation. *Journal of Organizational Behavior*, 26, 379-408. <https://doi.org/10.1002/job.312>

² Omari, M., & Paull, M. (2013) 'Shut up and bill': workplace bullying challenges for the legal profession, *International Journal of the Legal Profession*, 20 (2), 141-160. <https://doi.org/10.1080/09695958.2013.874350>

“Safe complaint systems should be put into place for bystanders to report bullying without fearing negative consequences to their self-image, status, or career progression.”

The policy and complaints procedure should be implemented, in so far as is practicable, with clients, customers and other business contacts, after consultation with trade union or employee representatives, where appropriate. The policy should be communicated to all employees and to all levels of management.

Safe complaint systems should be put into place for bystanders to report bullying without fearing negative consequences to their self-image, status, or career progression. The DAW Policy should include a commitment to review on a regular basis, in line with experience in the employment, changes in the law, relevant case law or other developments. A responsible person should be named in the policy to ensure that monitoring, training, and reviews take place.



AT A MINIMUM, THE POLICY SHOULD STATE THAT:

- a.** management and others in positions of authority have a particular responsibility to ensure that harassment does not occur;
- b.** that complaints are addressed promptly; and
- c.** that employees must respect the dignity of all others in the workplace.



WHAT ARE THE KEY ELEMENTS TO ENSURE A DAW POLICY IS EFFECTIVE?

Both codes provide clear and practical guidance on the key elements that should be included in a DAW Policy. These are set out in a direct and accessible way in the codes and so employers are encouraged to read those in the first instance. A number of the key principles that should underpin such a policy are highlighted below:

- A policy is only as useful as its implementation. All policies should be written in a clear, direct and accessible manner that allows all members of staff, regardless of their abilities, to readily access the information.
- Training should be provided to all policy subjects on adherence to the policy and regular monitoring should be undertaken by the employer to identify any gaps in understanding of the policy as well as gaps in the policy itself. (One of the new additions to the Harassment Code is that it now gives practical examples of how to monitor policies regularly: e.g. by staff surveys, anonymised questionnaires, confidential discussions at training courses etc.)
- Depending on size and other factors, organisations may decide to designate a “champion(s)” - as they are termed in the Harassment Code or a “contact person(s)” in the case of bullying. This designated person sits outside the HR structure and acts as an independent voice advocating for a diverse workplace culture, free of bullying, harassment and sexual harassment where all employees feel respected.
- The policy should explicitly state that employees must respect the dignity of others in the workplace.
- The responsibility on members of management to ensure the fair treatment of the respondent should be highlighted in the policy.
- Also, both codes now emphasise the need to ensure compliance with data protection legislation and the policy should reflect this. the various stages of the policy.

“Key to an effective policy is ensuring a culture of commitment to the values underpinning the policy across all strata of the organisation”

INTERVENTION: RAISING AWARENESS

Raising awareness around DAW matters, while promoting and reinforcing a positive workplace culture, are paramount to successfully tackling different forms of bullying/harassment. People may downplay abusive behaviours and may not be aware of the effect of their behaviour on other people.

Employers should consider undertaking regular surveys to help monitor DAW matters within organisations to understand gaps in DAW knowledge and where DAW issues are arising. Survey studies should be combined with focus groups and interviews, which could offer a deeper understanding of the lived experiences of employees working in different business sectors. This knowledge, in turn, can inform evidence-based training programmes.

For more information regarding the types of surveys employers might wish to undertake please see [Section 7 Practical Resources](#) below.

INTERVENTION: TRAINING

Key to an effective policy is ensuring a culture of commitment to the values underpinning the policy across all strata of the organisation. Training regarding the core principles of the policy and the sensitivities of fellow workers should be implemented and its effectiveness should be monitored on an ongoing basis. Professional learning resources with a focus on recognising, responding, and preventing bullying and harassment in the workplace should be integrated within professional learning and development frameworks. Training programmes should also be aimed at raising awareness around safe and effective strategies to report bullying/harassment from a bystander perspective. Moreover, research shows that employees belonging to minority groups are more likely to be subjected to bullying at work³. Thus, DAW training should include a diversity and equality component aimed to promote an inclusive organisational culture.

Employees should not be seen as passive recipients of predefined intervention programmes, but as active agents of change. This approach enhances employees' sense of agency and ownership, which in turn increases the chances for intervention programmes to be successful.⁵ Based on these considerations, it is recommended for DAW experts to collaborate with employees towards the implementation of DAW programmes reflecting the needs of staff members. Conflict de-escalation is an additional strategy. Theoretical frameworks that explain the development of workplace bullying have emphasised conflict escalation as an antecedent factor.⁶ Conflict de-escalation could be a valuable skill allowing employees to recognise and cope with abusive behaviours before they



1:2

Approximately one in two female respondents and one in three male respondents had been bullied in connection with their employment⁴.

1:3

One in three female respondents had been sexually harassed in a workplace context, as had one in 14 male respondents⁴.

³ McGinnity, F., Russell, H., Provalko, I., & Enright, S. (2021). Monitoring decent work in Ireland. The Economic and Social Research Institute (ESRI). <https://doi.org/10.26504/bkmnext414>

⁴ Us Too? Bullying and Sexual Harassment in the Legal Profession Report, International Bar Association, 2019

“Interpersonal skills training aimed to enhance empathy and feelings of concern towards others could also lead to a greater culture of equality and respect in the workplace”

escalate into bullying and/or harassment. A component of conflict de-escalation training could involve guidance on informal resolution strategies for both employees and managers.

Interpersonal skills training aimed to enhance empathy and feelings of concern towards others could also lead to a greater culture of equality and respect in the workplace. Empathy is the ability to understand another person’s experience, perspective, mental states, and emotions. Empathic people can “perceive what others feel,” “process the information,” and “respond effectively”⁷ Empathy becomes an organisational norm only when leaders create and nurture a “culture of empathy” that actively supports, develops, and recognises the role of empathy in day-to-day management and practice. Thus, empathic leadership is one of the pre-requisites to build and sustain a culture of empathy within organisations.

THE INTERNATIONAL BAR ASSOCIATION TRAINING ON BULLYING AND SEXUAL HARASSMENT

The International Bar Association and Acritas conducted the largest-ever global survey⁴ on bullying and sexual harassment in the legal profession. Nearly 7,000 individuals from 135 countries responded, from across the spectrum of legal workplaces. The results provide empirical confirmation of unacceptably high levels of bullying and sexual harassment in the legal profession.

- Approximately one in two female respondents and one in three male respondents had been bullied in connection with their employment.
- One in three female respondents had been sexually harassed in a workplace context, as had one in 14 male respondents.

The International Bar Association and The College of Law Australia have created an e-learning training programme. The training addresses bullying, sexual harassment and the role of individuals and workplaces in responding to such challenging dynamic behaviours.

You can access the training at www.ibanet.org/Bullying-Sexual-Harassment-Training

RESOLUTION: PROMPT AND EFFECTIVE RESOLUTION OF COMPLAINTS

Even where best practice is followed and a healthy, empathetic workplace culture exists, DAW complaints will inevitably arise from time to time. So, how do you deal with them fairly and effectively? Early intervention in a quick,

“Early intervention in a quick, calm and consistent manner is key to maintaining the organisation’s positive culture as it demonstrates a clear lack of tolerance for disrespectful behaviour”

5 Osatuke, K., Moore, S. C., Ward, C., Dyrenforth, S. R. & Belton, L. (2009). Civility, respect, engagement in the workforce (CREW). Nationwide organization development intervention at Veterans Health Administration. *The Journal of Applied Behavioral Science*, 45(3), 384-410. <http://dx.doi.org/10.1177/0021886309335067>

6 Baillien, E., Camps, J., Van den Broeck, A. Stouten, J., Godderis, L., Sercu, M. & De Witte, H. (2016). An eye for an eye will make the whole world blind: Conflict escalation into workplace bullying and the role of distributive conflict behavior. *Journal of Business Ethics*, 137, 415-429.

7 Clark, M. A., Robertson, M. M., & Young, S. (2019). “I feel your pain”: A critical review of organizational research on empathy. *Journal of Organizational Behavior*, 40, 166-192

calm and consistent manner is key to maintaining the organisation's positive culture as it demonstrates a clear lack of tolerance for disrespectful behaviour. Early intervention may allow for a complaint to be resolved in a such a manner that workplace relations are not irreparably severed. However, there is a clear distinction between acting swiftly and rushing a process. It is of the utmost importance that the organisation's policies are correctly followed and that fair procedures are afforded to all involved.



WHAT DOES AN EFFECTIVE COMPLAINTS PROCEDURE LOOK LIKE?

Both codes provide clear and practical guidance on the key elements that should be included in a DAW Policy. These are set out in a direct and accessible way in the codes and so employers are encouraged to read those in the first instance. A number of the key principles that should underpin such a policy are highlighted below:

- ☑ A commitment to a timely investigation with express time limits. (The Harassment Code confirms that there should not be an inordinate delay in the conduct of the investigation.)
- ☑ A statement that the employee's right to make a complaint under the EEAs in the WRC is not affected by raising a complaint internally and the statutory time limits applicable. The procedure should also clearly state that statutory time limits will not be paused pending the outcome of the investigation and shall continue to run.
- ☑ A statement that no assumptions will be made about the culpability of the respondent during the course of the investigation.
- ☑ That appropriate interim arrangements can be made to facilitate all concerned parties, where possible, pending the outcome of the investigation. Depending

on the circumstances of the case, this might include for example, alternative line management structure, change of work stations, or requesting the complainant and/or respondent to stay at home on fully paid leave. An employer should emphasise that any such measure does not amount to a penalisation or sanction on any of the parties concerned.

- ☑ That confidentiality will be maintained throughout any investigation to the extent possible, consistent with the requirements of a fair investigation.
- ☑ That any sanctions imposed should adequately reflect the gravity and seriousness of the findings.
- ☑ A right of appeal of the initial decision to be made within a specified timeframe. This right of appeal should be clearly communicated to the relevant parties. The appeal should be considered by a person other than the person involved in the initial decision. The appeal process should also incorporate the same core principles of the initial investigation.

Please see [Section 7 Practical Resources for the Health Safety Authority's Route Map Guide for Handling Workplace Bullying and template policy](#)

“Supports may include additional training, periodical check-ins with the team, team building activities or away-days, counselling or other appropriate interventions or support services.”

RESOLUTION: FOLLOW-ON STEPS AND PREVENTING REOCCURRENCE

A number of practical considerations arise for employers upon the conclusion of a complaint procedure. A complaint procedure is likely to result in tension and disharmony between the parties, co-employees, work teams and others, at least in the short-term. Naturally, the supports required following the conclusion of a complaint process will depend on the nature of the complaint and the parties involved and it is important for employers to carefully consider what supports may be appropriate in the particular circumstances. Not only is this important from a duty of care perspective but it is also integral in realigning the workplace culture and preventing reoccurrence of the behaviour that resulted in a complaint. Supports may include additional training, periodical check-ins with the team, team building activities or away-days, counselling or other appropriate interventions or support services.

SECTION

5

COMPLAINTS AND INVESTIGATIONS



DIGNITY AT WORK TOOLKIT

WHAT SHOULD AN EMPLOYER DO WHEN IT RECEIVES A COMPLAINT?

- Preliminary Considerations
- Initiating an Investigation
- An Overview of Running an Investigation
- The Appeal Process
- Disciplinary Action
- Final Stages

Note: This section provides information to workplaces that may be used as an aid but it is not a replacement for legal advice nor a legally binding document



PRELIMINARY CONSIDERATIONS

Upon receipt of a DAW complaint an employer should consider the following preliminary questions:

- Is everyone safe? Does the employer need to consider placing someone on garden leave/paid time off? Is specialist legal advice required?
- What form does the complaint take? Verbal or written, formal informal? Does the written complaint (if presented) contain sufficient information/clarity on which to proceed? Can the nature of the allegation be readily identified and hence the relevant policy?
- Is there information relating to the complaint that should be secured?
- What is the plan of action in the event that the dispute may run through the full process (of mediation, investigation, appeal, disciplinary action and subsequent appeal and ultimately third-party involvement)? The employer should see themselves as the project manager orchestrating the various stages of the policy.

It is important to act promptly while ensuring strict adherence to the Company policies. The policy is the rule book governing the manner in which a complaint should be dealt with. In the first instance, an employer should consider whether the dispute is amenable to informal resolution. Where appropriate, the employer should offer parties the option of informal resolution, which includes the option of mediation. Also, it is of paramount importance for the employer to ensure that both parties to a complaint are treated equally from the outset.

INITIATING AN INVESTIGATION

Employers should appoint an appropriate person to investigate the complaint. (The best practice is for investigators to be trained in conducting investigations.) Terms of Reference (ToR) specific to the investigation should be drafted. The ToR should clearly set out how the investigation will run and should be furnished to all parties to the complaint. The ToR will be different for each type of investigation and the circumstances of each dispute. The investigator should have full ownership of the complaint and should operate independently, impartially and without interference from the employer or the person to whom the complaint was initially referred.

AN OVERVIEW OF RUNNING AN INVESTIGATION

- Arrange a meeting with the complainant and record their description of the incidents being complained of, asking questions to secure clarity and detail. Share a record of this meeting with the respondent.
- Arrange a meeting with the respondent and record their description of the incidents, asking questions to seek clarity. Share a record of the meeting with complainant for comment.
- Interview any witnesses identified and create a record of their recollections of the various incidents. (Witnesses may include line managers, colleagues, etc.) Also, interview

“When reviewing the investigation report, an employer should ensure that the investigation was conducted appropriately and addressed the original complaint.”

any witnesses who can provide background information such as processes unfamiliar to the Investigator including for example which of the parties was responsible for an item of work etc.

- All interviewees should be given the opportunity to agree the record of their interview. All witness interviews should be shared with the parties for comment.
- At this point both parties should have received all information collected by the investigator and upon which s/he may rely to reach their conclusions.
- Both Codes of Practice refer to not stating whether the allegations are upheld or not – rather the investigation report will come back to the employer for final decision.

THE INVESTIGATION REPORT

When reviewing the investigation report, an employer should ensure that the investigation was conducted appropriately and addressed the original complaint. Also, employers should consider whether the conclusion is reasonable based on the information collected. The employer should decide whether or not it accepts the findings of the investigation and whether further action is necessary. For example, where allegations of misbehaviour have been established the employer may refer the respondent for disciplinary action. Alternatively, if not established, the employer may decide to hold training for the parties to ensure best practice going forward. If necessary, and particularly if the dispute has been very contentious, the employer may wish to arrange for mediation between the parties to ensure they can work together professionally.

THE APPEAL PROCESS

The manner in which an appeal is run depends on the policy. Usually, investigation appeals consider whether the appropriate procedure was followed and whether the conclusions are perverse based on the information available to the investigator at the time of the investigation. The appeal should correct any deficiencies in the initial investigation and should have its own ToR. If the appeal does not correct any deficiencies identified, then a new investigation is required. Whether a de novo investigation is required will depend on the overall circumstances of the case.

DISCIPLINARY ACTION

Once the allegation has been upheld and the employer has decided to accept the outcome of the investigation/appeal, disciplinary action in some form is required. Best practice suggests that a disciplinary hearing should take place. This is not a re-investigation but rather an opportunity to present the employee with the matters against them which have been upheld and to provide them with an opportunity to present any mitigating factors relevant to the issues.

An employer may appoint another person to undertake the disciplinary process or may undertake the hearing themselves. When appointing a hearing adjudicator, employers should bear who will conduct the appeal, if one is provided for. For example, it may be better to appoint another person to conduct the appeal so that the head of the practice can be the ultimate decision maker. This comes back to having a clear plan on the structure of the process from the outset.

FINAL STAGES

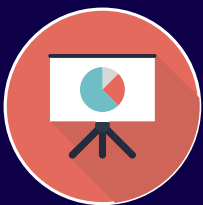
It is more common to have an appeal following disciplinary action, however, this runs the risk of complaints regarding the manner in which the investigation was carried out surfacing at this juncture. When an appeal process is offered following an investigation process, it allows any complaints relating to the investigation process to be dealt with in advance of any disciplinary action being imposed. Employers should carefully consider at which stage they wish to offer an appeal and indeed whether two appeals might be preferable.

Finally, where parties are unsatisfied with the outcome of the complaint, they may refer the complaint to a third-party forum such as the Workplace Relations Commission or the civil courts. Statutory time limits for the referral of complaints apply.

SECTION

6

DIGNITY MATTERS REPORT KEY FINDINGS



DIGNITY
AT WORK
TOOLKIT

LAW SOCIETY DIGNITY MATTERS REPORT,
2021 KEY INSIGHTS IN BULLYING, HARASSMENT
AND SEXUAL HARASSMENT.



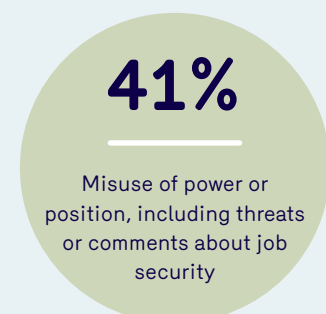
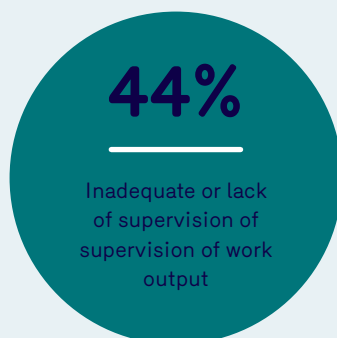
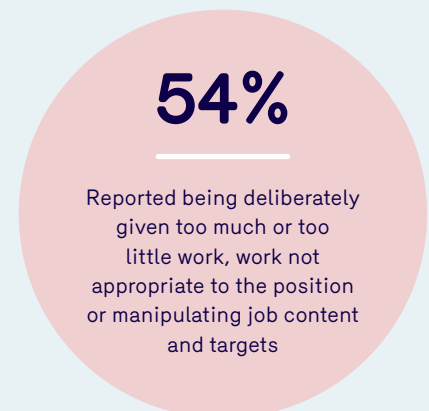
DIGNITY MATTERS REPORT KEY INSIGHTS - EXPERIENCED BULLYING

- **1 in every 3 females** and **1 in every 2 males** who responded to the survey experienced bullying.
- In **46% of the situations**, bullying contributed to respondents leaving the workplace.
- The **majority of respondents (73%)** did not report their experience.

Dignity Matters Report Section 4.3.6.1 Key Insights – Experienced Bullying

In the Dignity Matters Survey, 588 respondents experienced a number of different bullying behaviours that were not associated with conduct on a discriminatory ground.

The 5 most common forms of conduct were:



Dignity Matters Report Section 4.3.6.2 Form of conduct experienced



DIGNITY MATTERS REPORT KEY INSIGHTS - EXPERIENCED HARASSMENT

- **1 in every 2 females** and **1 in every 9 males** who responded to the Dignity Matters survey said they experienced harassment.
- **50%** reported the harassment contributed to them **leaving the workplace.**
- **71%** of respondents did not report their experience.

Dignity Matters Report Section 4.3.7.1 Key insights - Experienced Harassment

Of those respondents who experienced harassment, **the 5 most common types** of conduct experienced were:

58%

Work requirements that impact on child/care/other personal arrangements, e.g. early morning meetings, late working, requirement to answer emails while not at work, etc.

66%

Deliberately given too much or too little work, work not appropriate to the position or manipulating job content and targets

58%

Overbearing supervision, undermining of work output or constant unproductive criticism

51%

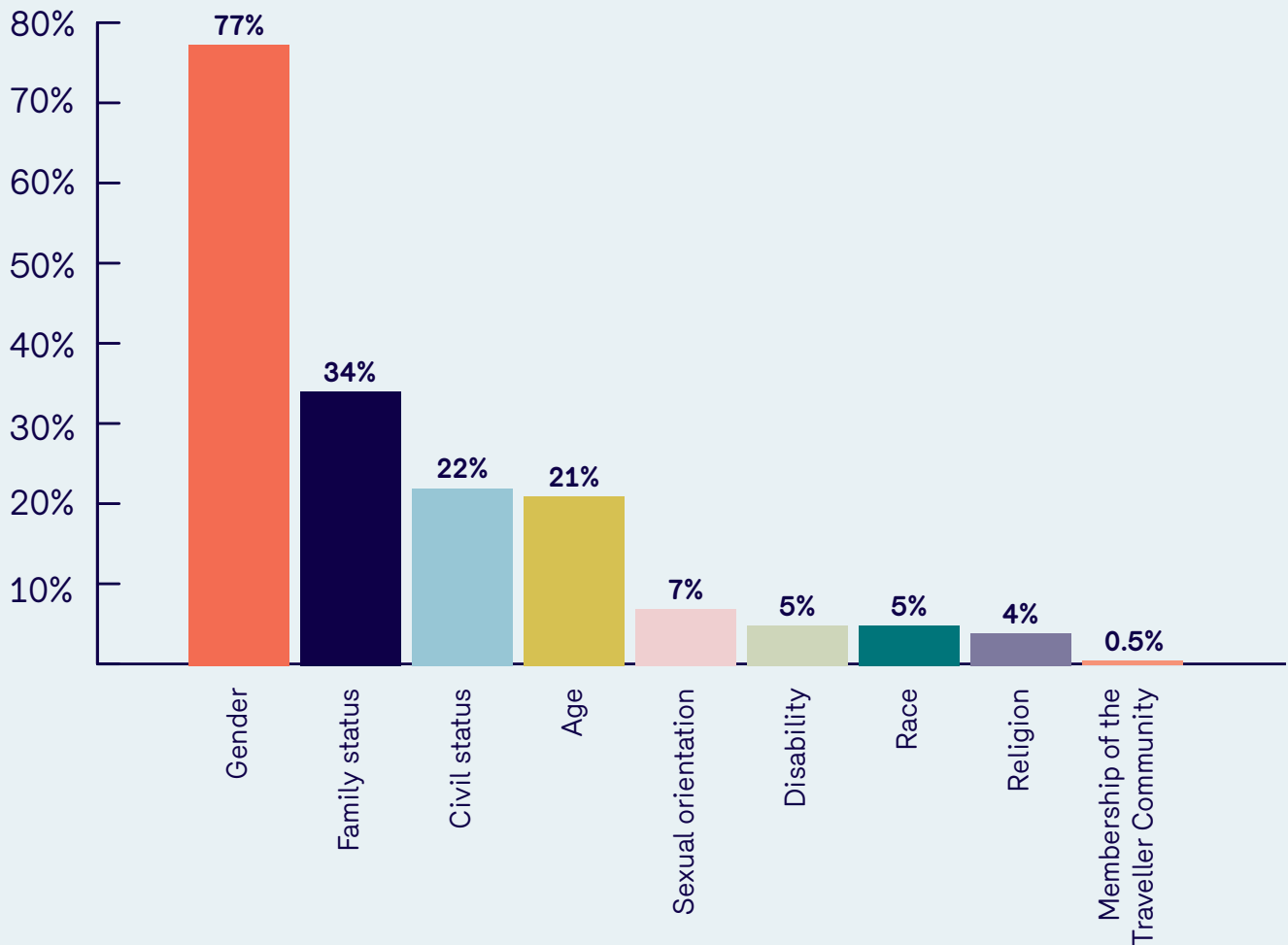
Misuse of power or position, including threats or comments about job security

57%

Verbal abuse/insult, including offensive jokes or comments, ridiculing or demeaning language, shouting or spreading malicious rumours

Dignity Matters Report Section 4.3.7.2 Harassment Conduct

Respondents were asked to identify whether they believed the behaviour they experienced was associated with one of the discriminatory grounds



Dignity Matters Report Section 4.3.7.3 Harassment grounds



Login to access the Law Society Dignity Matters Report at www.lawsociety.ie/dignitymatters



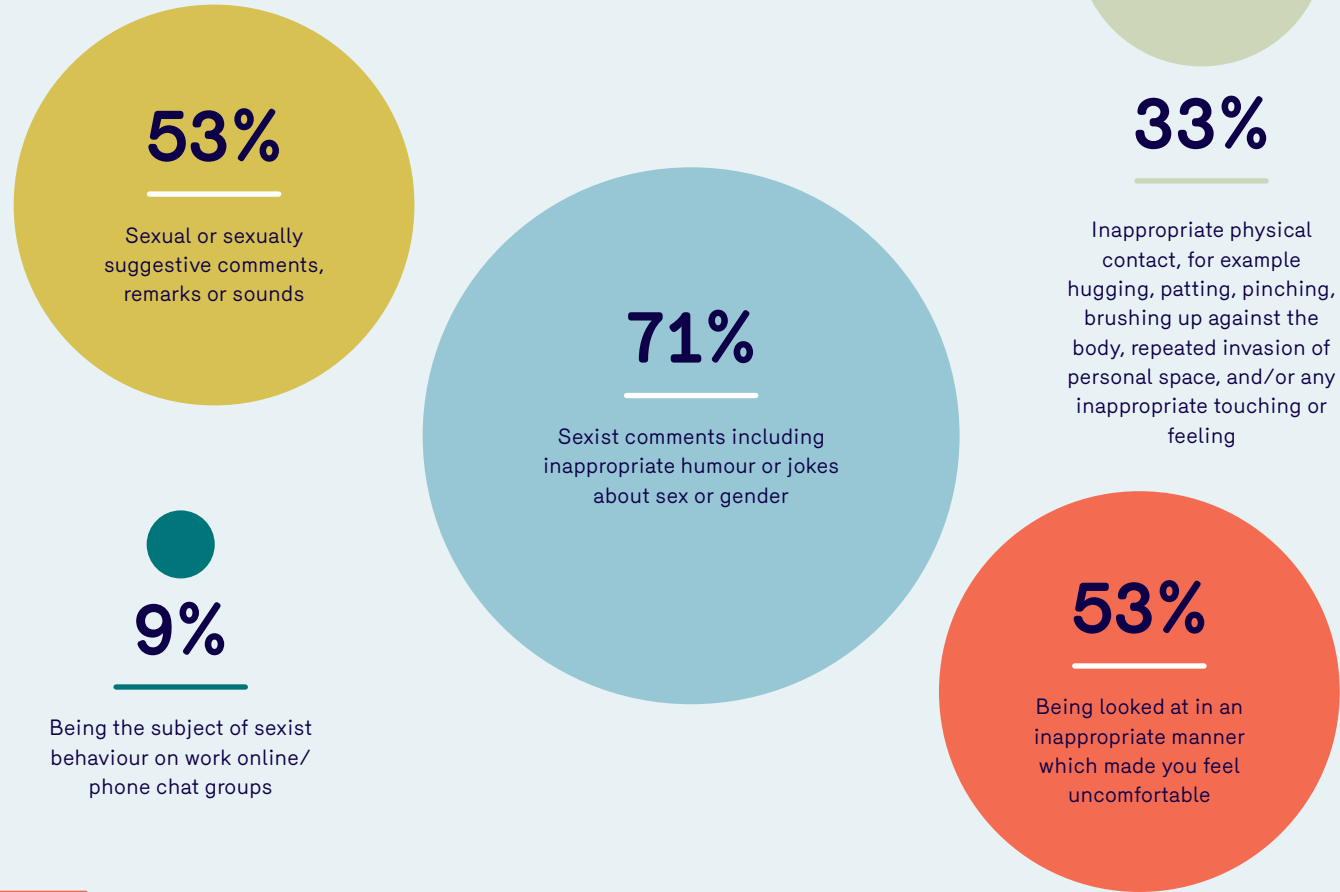
DIGNITY MATTERS REPORT KEY INSIGHTS - EXPERIENCED SEXUAL HARASSMENT

- **1 in every 2 female respondents** and **1 in every 8 male respondents** said they experienced sexual harassment.
- **21% of respondents left the workplace** because of their experience of sexual harassment.
- **91%** of sexual harassment cases were not reported by respondents.

Dignity Matters Report Section 4.3.8.1 Key insights - Experienced Sexual Harassment

Sexual harassment was experienced by 37% (n.579) of respondents to the Dignity Matters Survey.

The 5 most common types of sexual harassment reported by respondents were:



Dignity Matters Report Section 4.3.8.2 Form of conduct experienced

SECTION

7

DIGNITY AT WORK PRACTICAL RESOURCES FOR WORKPLACES



DIGNITY AT WORK TOOLKIT

- Guidance on Drafting an Anti-Bullying Policy
- Suggested Route Map for Managing Workplace Bullying Complaints
- Guidance on Drafting Anti-Harassment and Sexual Harassment Policies
- Sample Organisational Climate Surveys
 - Workplace Bullying
 - Workplace Cyberbullying
 - Organisational Climate

Note: This section provides information to workplaces that may be used as an aid but it is not a replacement for legal advice nor a legally binding document



WORKPLACE ANTI-BULLYING POLICY TEMPLATE

This template is designed by the Health and Safety Authority to provide general guidance in drafting a policy document and the owner should ensure that the work completed is site specific and relevant to their organisation and each place of work. The policy should be developed with reference to the 2021 Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work.

This Code applies to all employments in Ireland irrespective of whether employees work at a fixed location, at home or remotely. Extracts from the 2005 Act which are relevant are set out in Appendix 2 of the Code. Failure to follow this Code is not an offence in itself. However, Codes of Practice are referenced and used in criminal proceedings, section 61 of the 2005 Act provides as follows:

“61. (1) Where in proceedings for an offence under this Act relating to an alleged contravention of any requirement or prohibition imposed by or under a relevant statutory provision being a provision for which a Code of Practice had been published or approved by the Authority under section 60 at the time of the alleged contravention, subsection (2) shall have effect with respect to that Code of Practice in relation to those proceedings.

- (2) (a) Where a Code of Practice referred to in subsection (1) appears to the court to give practical guidance as to the observance of the requirement or prohibition alleged to have been contravened, the Code of Practice shall be admissible in evidence.
- (b) Where it is proved that any act or omission of the defendant alleged to constitute the contravention:
- is a failure to observe a Code of Practice referred to in subsection (1), or
 - is a compliance with that Code of Practice,
- then such failure or compliance is admissible in evidence.

A document bearing the seal of the Authority and purporting to be a Code of Practice or part of a code of practice published or approved of by the Authority under this section shall be admissible as evidence in any proceedings under this Act.”

Name of Policy

Date

Due for Review

Person Responsible

Signed

Please refer to the Code of Practice for guidance when completing policy

PART ONE

Purpose

This section should clearly state

- purpose of the policy
- employers' declaration of commitment to ensuring that the place of work is free from workplace bullying

Scope

The policy applies to

- employees, clients, contractors, or others the employee may come into contact with in their work roles
- place of work, conferences, external meetings, workplace social events etc.

Definition of bullying

- Provide a clear definition of workplace bullying as per code
- Provide examples (please refer to Code).

What is not bullying at work

- There are various workplace behavioural issues and relationship breakdowns which are troubling, upsetting, and unsettling but are not of an adequate level of destructiveness to meet the criteria required for a bullying case
- Provide some examples

Bullying v Harassment

- The interchangeable use of the words harassment and bullying can lead to a misunderstanding of what each one relates to
- They are legally distinct concepts and so a behaviour can be deemed either bullying or harassment, not both
- Provide definition for harassment (please see Code for assistance)

Allocation of responsibilities

Outline roles of:

- Role of employer
- Role of employee
- Contact Person (may not be practical for all organisations to fulfil this role)

PART TWO

Complaints process

- There is both an informal and formal process for addressing workplace bullying

- Please refer to the Code of Practice for in depth guidance on steps to be taken in the initial, secondary informal and formal processes

Initial Informal Process

- A prompt and informal problem-solving approach often offers the best potential for addressing many allegations of bullying effectively.

Secondary Informal Process

If the initial informal is unsuccessful or if the complainant or the employer deem it inappropriate, this more protracted, yet still informal system can be put in place. This phase involves brief note taking using abbreviations, by the person managing the process and some intervention actions. This is in order to remedy and record a process used and the matter was not ignored.

Closure of Informal Process

- Both parties should be given support or periodical reviews, insofar as is reasonable
- On occasion, this may include consideration of short term counselling/EAP/ support systems or other appropriate interventions
- In many situations, with the co-operation of all parties, the matter will be resolved here

Formal Process

- It is good practice that all informal resolution avenues are explored before a formal process is begun.
- Proceeding to a formal process should not be viewed as automatic and it is important that this step is based on assessment and reasonable evidence-based decision of management
- Being able to evidence a reasonable decision-making process is important and documentary evidence of same may be required to defend the employer's duty at a later stage, so a record of that should be kept by the appropriate person acting for the employer

Formal Complaint

- The complainant must make a formal complaint in writing, signed and dated
- Where this is not possible, a written record should be taken of the complaint by the assigned person and signed by the complainant and dated

Investigation

The investigation should be governed by terms of reference which should include the following:

- In accordance with the employment's Anti Bullying Policy which should reflect the HSAWRC Code of Practice
- Include an indicative timeframe for start and completion

- The scope of the investigation, sets out the procedure to be adopted for findings of fact related to the complaint and a statement that the investigator will consider, based on the facts before them whether the behaviour(s) complained about, on the balance of probabilities, have occurred
- The confidentiality of the process should be emphasised

Communication of outcomes

Effective communications of any outcome are critical. In this regard: employers must ensure that outcomes are communicated clearly, sensitively and fairly to parties concerned.

Appeals

- An appeals process for both parties should be in place, including reason for the appeal, and time limits for appeal (specified in the policy).
- The appeal should be heard by another party, of at least the same level of seniority as, but preferably more senior than, the original investigator

Management of malicious complaints

- A malicious complaint can be described as an allegation made without foundation, and with malicious intent, where a person knowingly or without regard to whether it is true or not, accuses another person of bullying them. This could also apply to where one person maliciously complains of someone allegedly bullying a third party, without fully exploring the veracity of the claim
- Ensure policy has system for addressing malicious complaints

Review of policy

- Responsibility for review of policy
- Regular review (time frame)
- Review if relevant changes in workplace makeup
- Any external relevant factors



A SUGGESTED ROUTE MAP FOR EFFECTIVE MANAGEMENT OF COMPLAINTS OF WORKPLACE BULLYING AT ENTERPRISE LEVEL

Reference Note: This section was contributed by the Health and Safety Authority for the Law Society Dignity at Work Toolkit. This information may be used as an aid but is not legal advice or a legally binding document.

- Note 1:** This is the route for handling any complaint which is presented as ‘workplace bullying’. It doesn’t cover harassment under any of the 9 grounds. Whilst the route may well be practical for those complaints, HSA remit is for bullying, not harassment, a distinct IHRA issue.
- Note 2:** Some complaints which present as bullying, may not - either on the face of it or after examination - be progressed as bullying. But all complaints presented should be progressed this way initially* in order to ascertain their actual bone fide and the employer remit/duties.
- Note 3:** It is the responsibility of the employer to ensure those acting on their behalf, in management/leadership positions, model and enact the duties of the employer with regard to their health and safety obligations specifically with regard to Section 8 (2) b of the Safety, Health and Welfare at Work Act 2005. It is the responsibility of employees to meet their obligations and duties under that Act.

Suggested Process – see Code of Practice (COP) for official guide:

1. Initial complaint presented verbally to a manager/supervisor
2. Manager listens and repeats back to the complainant the essence of the complaint (clarity for both) and asks complainant if s/he is serious/is making a complaint to him/her? This is to distinguish actual complaint making from general ‘giving out’ that occurs in everyday workplace interactions. Not every uttered complaint should initiate further action.
3. If the individual says they do, manager sets a future brief time to meet with the complainant in private space to further listen and categorise complaint as bullying or non-bullying issue. If deemed, on reflection and re hearing, a non-bullying issue, this process mapping doesn’t apply.*
4. Otherwise, manager and complainant agree a way forward if the complaint is bone fide improper behavior-allegation based– this may mean nothing more done than a discussion, it may mean manager assesses the behavior as within reasonable management activity, that it requires further assessment, that it is a conflict of view, or perspective etc. The reaction depends on the content of and severity/seriousness of the complaint and the possible fallout if the complaint was upheld. A response is for manager to manage it to a safe

solution – keep a surveillance approach to the noted behavior going forward, for instance - ideally in agreement with complainant. The above approach can be a ‘triage’ and used for any workplace complaint made to a manager as a first line of response to the generality of workplace issues arising regularly. Matter may rest here and no further action needed.

5. Complainant repeats complaint verbally a second time (second time complaining of same person/behavioral pattern)

6. First Informal Stage applies

- a. Manager again sets a suitable, agreed time to again meet with complainant.
- b. If manager concludes the matter is mild, and/or has been adequately dealt with, he/she notes the issues in a brief note, notes the organizational response and tells the complainant same. Manager must make note of all the behaviours complained of, for future assessment of the response. The individual may at this time give a written list of issues, which manager should record and keep. Manager clarifies to complainant what the issues are, what the different roles are and what the solution is and notes this in diary.
- c. If manager assesses the complaint is within the bullying sphere, and is requiring further engagement, a next step is agreed with complainant, informally and manager applies whatever that is, within a short term time frame – ideally within weeks. This often means manager doing a number of small things to reduce tensions, clarify both roles, engage with both parties diplomatically and separately, to reduce conflict zones, re arrange systems of work, if possible and/or attempt to build better relations, informally.
- d. Review with complainant within 4 weeks to ensure all is in order and note in brief the review outcome. Matter may rest here.
- e. Complainant makes a further verbal complaint to manager – third complaint against same person

7. Second Informal Stage

- a. Manager provides complainant with copy of the ABP and advises the next step – phase 2 of the informal procedure of the COP. Manager gets briefing from complainant of actual recent behaviours. Do they meet the bullying definition – are they improper behavior or conduct which a reasonable person would find undermining? If deemed improper behaviours, manager has interventionist role now. S/he approaches alleged bully to set up a meeting re behaviours. Manager addresses same in informal manner, citing the actions, assessing answers and agreeing an action plan for behaviours. Behavioural goals and standards should be set and recorded and time frames given as well as consequences if behaviours not met. This may be targeted just at the alleged bully or at both parties, if both parties are assessed as engaging in improper behaviour. If only one person is deemed to be behaving improperly, only that party’s behavior should be targeted.
- b. Manager informs complainant the matter is being managed. Explains the behavioural goals without detailing the interaction with the alleged bully.

No finding has been made against anyone at this stage, although behavioural issues have been raised for a solution.

c. Manager makes a brief written note of same.

d. Manager arranges with both to meet them individually after 4 weeks to review.

This should end the first and second informal approach.

Formal Process

If there is a further complaint, the manager asks for it in writing and informs the complainant of the formal procedure, ensuring they have accessed a copy of the ABP and are familiar with the Code of Practice and the investigation process. Manager notes all of the above in a diary for formal record.

On receiving the written complaint, manager checks that it is

- Meets the standards for an allegation of workplace bullying
- a range of behaviours within that are outlined and described
- it is signed and dated by the complainant

Manager informs a HR or employer rep and engages with him or her on the process to be engaged for formally dealing with a bullying allegation. Another party (at least as senior as, if not more senior than, the person complained about) being involved is important here. The complaint is again reviewed by that party.

Review includes:

- Does it fit within the definition of bullying?
- Are the behaviours adequately outlined?
- Are they assessed as, if true, a pattern of on-going bullying behaviours?

If not, an alternate solution should be sought. Note: it should be recorded very clearly who made this decision and based on what rationale. This is the employer decision and can be used as evidence of employer meeting or not meeting their duties under the 2005 Act should matters at a later date be assessed by Authority inspection or be played out in a public/legal domain. The decision made should be communicated fully, in writing to the complainant. Alternative dispute resolution or other IR or HR mechanisms may be applied and records kept.

IF the written complaint is deemed to be potentially bullying, the formal phase of the Code of Practice applies as the standard – see COP Formal process

* A COP is not statute but a guide to best practice so the spirit of the code should be adhered to and timelines and roles should be clearly formally outlined to reflect the Code.

- The Health and Safety (HSA) role is limited to the duties as outlined in the 2005 Act and does not have a role in disciplinary or other matters which can arise as a result of workplace bullying cases.
- The Workplace Relations Commission (WRC) plays a strong lead role at state level in the mediation and adjudication of these matters.



GUIDANCE ON DRAFTING AN ANTI-HARASSMENT AND SEXUAL HARASSMENT POLICY

This guide is intended to provide general guidance on drafting an Anti-Harassment and Sexual Harassment Policy (the “Policy”). A Policy should be specific to the individual employer, and take into account the size, structure and practical considerations that apply to the individual employer.

The primary reference for the contents of the Policy is the Code of Practice on Sexual Harassment and Harassment at Work (the “Code”), published by the Irish Human Rights and Equality Commission. Although the Code is not legally binding, the provisions of the Code are admissible in evidence in proceedings before a court or in proceedings under the Employment Equality Act 1998 – 2015 (the “Act”) in the Workplace Relations Commission (“WRC”) or Labour Court. Therefore, the Policy should comply with the Code to the greatest extent possible, as appropriate to the employer’s size and structure.

Both harassment and sexual harassment can be addressed in a single policy, and these may also often be combined with a bullying policy into a single Dignity at Work policy. If a single policy is used, each concept should be clearly defined to avoid confusion.

In smaller employers, it may be difficult to implement in full the provisions of the Code. As noted above, the Policy can be tailored to take into account the size and structure of the individual employer, while still complying with the Code to the greatest extent possible. Any adaptations that are made should be fully consistent with the Code’s general intentions. The use of an external person or body may be necessary during the process in order to comply with the requirement for fair procedures. For example, a third party investigator may be used in order to carry out an impartial investigation, while allowing for any decision on a disciplinary process or appeal to be made by an internal individual. Third parties may also have the resources and expertise which would not be internally available to a smaller employer. Therefore, for smaller employers where it is anticipated that the use of external third parties may be required, the Policy should note that the employer reserves the right to use an external third party during the process.

Employers are legally responsible for the sexual harassment and harassment of employees by co-employees, clients, customers or other business contacts of the employer. It is a defence if the employer can prove that the employer took reasonably practicable steps to prevent the harassment, to prevent the victim from being treated differently in the workplace or in the course of employment,

Note: This section was contributed by ByrneWallace LLP for the Law Society Dignity at Work Toolkit. This information may be used as an aid but is not a replacement for legal advice nor a legally binding document.

and to reverse any effects of the harassment. In order to rely on this defence, employers must have comprehensive, accessible, effective policies that focus on prevention, best practice and remedial action. They must also have accessible complaints procedures.

Guidance on the contents and structure of an anti-harassment and sexual harassment policy are set out below. Organisations should always consult the Code in detail when drafting such a policy.

1. Introduction and Purpose

This section should state:

- the purpose of the Policy;
- the commitment of management to the Policy and to a workplace free from harassment and sexual harassment;
- that harassment and sexual harassment by employees or others in the workplace will not be tolerated.

2. Applicability and Scope of the Policy

This section should set out who the Policy applies to and the circumstances in which it applies. It should include the following:

- that it applies to employees and others in the workplace (including clients, customers, etc.);
- for employees, set out the consequences of a breach of the policy (e.g. disciplinary action);
- for non-employees, set out the consequences of a breach of the policy (e.g. termination of contract, exclusion from premises, etc.);
- that the Policy applies to behaviour in work and elsewhere in the course of employment, including work related events outside the premises or outside of normal working hours (e.g. training, conferences, work social events etc.).

The Policy should state that management and others in positions of authority have a particular responsibility to ensure that harassment does not occur and that complaints are addressed promptly. Examples of how this can be done should be set out (as referred to in the Code).

The Policy should state that employees must respect the dignity of others in the workplace and that they contribute to a harassment-free work culture by co-operating with management.

3. Communication, Monitoring and Training

This section should set out how the Policy will be communicated to employees and non-employees, and should include:

- management commitment to communication, monitoring and training;
- how the Policy will be communicated to employees and non-employees;
- when training will be carried out (e.g. at induction and other intervals as appropriate);
- how effectiveness is monitored.

The Code also refers to a “Senior Level Champion”, which organisations may designate, depending on size and other factors. The “champion” would be outside the HR structure, and be an independent voice advocating for a diverse workplace culture free of harassment where all employees feel respected. The Code notes that it is a matter for each particular organisation to determine what is feasible in relation to this, given their size and resources.

4. Harassment

This section should provide information on what constitutes harassment, and should:

- note that harassment is based on one of the protected grounds under the Act, and list these protected grounds;
- provide the legal definition of harassment;
- state that conduct may constitute harassment even if it is not specifically directed at a particular person;
- state that harassment may consist of behaviour, spoken words, etc.;
- state that a single incident may constitute harassment;
- give examples of harassment (as set out in the Code).

Importantly, the Policy should also note that the intention of the person carrying out the behaviour is irrelevant, and that what matters is the effect on the person the subject of the harassment.

Sexual Harassment

Similar to the above, this section should set out information on what is sexual harassment, and should:

- provide the legal definition of sexual harassment;
- state that conduct may constitute sexual harassment even if it is not specifically directed at a particular person;
- state that a single incident may constitute sexual harassment;
- give examples of sexual harassment (as set out in the Code).

Again, the Policy should note that the intention of the person carrying out the behaviour is irrelevant, and that what matters is the effect on the person the subject of the sexual harassment.

5. Victimisation

This section should provide information on victimisation under the Act and should:

- provide the legal definition of victimisation;
- state how any complaint of victimisation will be dealt with by the employer.

6. Dealing with harassment / sexual harassment

The Code provides that employers should have both an informal and a formal procedure in place for dealing with complaints of harassment or sexual harassment, and sets out core elements of a complaints procedure, which can be adapted as appropriate to reflect the size and complexity of the organisation.

These core elements are set out in more detail in the Code but include: a timely investigation with express time limits; that it does not affect any statutory rights; no victimisation; procedural fairness; any alternative working arrangements that may be pending the outcome of the investigation; potential sanctions; confidentiality provisions; and an appeals process.

6.1. Informal procedure

The informal procedure should provide for an appropriate person (i.e. impartial, with sufficient seniority and adequate training) to be available to provide information to both employees and non-employees on the complaints procedure and on the Policy in general, and to assist in the resolution of any problems informally.

It should also state that some complaints may be resolved by the employee who is being harassed objecting to the behaviour and letting the other person know that it is not welcome / offensive.

Mediation should be provided for as an option in the informal procedure, and explained in general terms, noting that it is voluntary and with agreement of both parties.

6.2. Formal procedure

The Policy should set out when it is appropriate to invoke the formal procedure and:

- that allegations should be in writing, and that the respondent will be notified of these;
- that mediation may be considered again at this point;
- that arrangements will be made to carry out an investigation as soon as possible; and
- that adjustments to the working arrangements of the parties may be necessary.

6.2.1. Investigation

The Policy should set out how the investigation will be conducted, and the procedure that will apply to an investigation. The Code notes that external assistance with the investigation may be needed in some circumstances to ensure impartiality, objectivity and fairness. Where the respondent objects to the investigator appointed, such objection should be given proper consideration.

The investigation procedure should include that:

- the investigation will be conducted in accordance with fair procedures and natural justice;
- the investigation will be carried out by at least two people (the Code notes that this may not always be practicable, so this should be considered in the context of the individual organisation when drafting the Policy);
- the investigation team should be gender balanced (if possible) and appropriately trained;

- both parties will be informed what the procedure entails and the relevant timeframe;
- parties have a right to be accompanied and/or represented (by friend / colleague / trade union rep);
- the respondent will be given full details of the allegation, any written statements, interview notes with witnesses / complainant and any other evidence;
- the respondent will be given time to make a response to the allegation;
- confidentiality will be maintained to the greatest extent possible;
- a written record will be kept of all meetings and inquiries;
- a written report will be produced by the investigator(s) with their findings and provided to both parties outlining findings and the reason for the decision;
- if the investigation concludes that an employee may have a case to answer, the report will recommend whether the disciplinary process should be invoked;
- if the investigation concludes that a non-employee has a case to answer, the report will recommend sanctions against the non-employee / their employer;
- the report may also recommend other action;
- a right of appeal exists for both parties and what this entails.

If the complaint is not upheld, this should be made clear to both parties. The Policy should provide that both parties will be given appropriate support and follow up following the investigation.

7. Confidentiality

The Policy should state that all parties and witnesses must keep all details relating to the complaint confidential to the greatest extent possible and consistent with due process, and that a failure to adhere to this requirement may be treated as a disciplinary matter.

8. Review

A review of the Policy from time to time should be provided for. If a review is carried out any amendments should be communicated to the employees.



ORGANISATIONAL CLIMATE SURVEY TEMPLATE

Note: The following surveys may be used as an aid but is not legal advice or a legally binding document. The section was created with input from Dublin City University – Anti-Bullying Centre.

Workplace Bullying

The Negative Acts Questionnaire-Revised (NAQ-R) collects information about employees' victimisation experiences at work. The NAQ-R taps direct and indirect aspects of workplace bullying and includes items that can be constructed respectively as work-related bullying (items 1 to 7), person-related bullying (items 8 to 19) and physical intimidation (items 20 to 22). All items are written in behavioural terms, with no reference to bullying.

Respondents are asked to indicate the frequency with which they were exposed to the nine negative acts on a 5 point Likert scale ranging from: Never (1), now and then (2), monthly (3), weekly (4) and daily (5).

Some of the negative acts listed below can be relatively common in the workplace, and when occurring in isolation can be seen as a sign of “incivility” at work. However, they might be framed as bullying when persistently directed towards the same individual(s), over time.

Note: Explanation of survey instrument, this should not be included when administering the questionnaire.

Sample Workplace Bullying Survey - The Negative Acts Questionnaire-Revised

The below questions enquire about your experiences at work in the past six months including any period of remote working. Have you experienced any of the following acts at work, from a senior colleague, peer and/or junior colleague?

1. Someone withholding information which affect your performance
2. Being ordered to do work below your level of competence
3. Having your opinions ignored
4. Being given tasks with unreasonable deadlines
5. Excessive monitoring of your work
6. Pressure not to claim something to which by right you are entitled (e.g., sick leave, holiday entitlement, travel expenses)
7. Being exposed to an unmanageable workload
8. Being humiliated or ridiculed in connection with your work
9. Having key areas of responsibility removed or replaced with more trivial or unpleasant tasks
10. Spreading of gossips or rumours about you
11. Being ignored or excluded
12. Having insulting or offensive remarks about you

13. Hints or signals from others that you should quit your job
14. Repeated reminders of your errors or mistakes
15. Being ignored or facing a hostile reaction when you approach someone at work
16. Persistent criticism of your errors or mistakes
17. Practical jokes carried out by people you don't get along with
18. Having allegations made against you
19. Being the subject of excessive teasing and sarcasm
20. Being shouted at or being the target of spontaneous anger
21. Intimidating behaviours such as finger-pointing, invasion of personal space, shoving, blocking your way
22. Threats of violence or physical abuse or actual abuse

Note: There are a number of behaviours that can be assessed when investigating organisational climate. This survey template is not exhaustive

Workplace Cyberbullying

The Workplace Cyberbullying Measure assesses cyberbullying experiences at work. The questionnaire includes items assessing work-related cyberbullying (items 1 to 10) and person-related cyberbullying acts (items 11 to 17).

All items are written in behavioural terms, with no reference to cyberbullying.

Respondents are asked to indicate the frequency with which they were exposed to the nine negative acts on a 5 point Likert scale ranging from: Never (1), now and then (2), monthly (3), weekly (4) and daily (5).

Note: This is background information on the survey and should not be included if administering the survey.

Sample Workplace Cyberbullying Measure Survey

The below questions enquire about your experiences at work in the past six months including any period of remote working. Have you experienced any of the following acts at work through technology, from a senior colleague, peer and/or junior colleague?

1. Received messages that have a disrespectful tone.
2. Been unfairly blamed for work-problems
3. Received aggressively worded messages (e.g., using all capital letters, bold font, or multiple exclamation marks).
4. Had another organisational member copy people into messages that reflect negatively on you
5. Had your work unfairly criticised
6. Received rude demands from a colleague
7. Been sent conflicting information

8. Been bypassed in group communications that are relevant to your work role
9. Been the subject of communications that undermine you
10. Received unreasonable work demands
11. Experienced unfair personal criticism (e.g., on your character, appearance, opinions)
12. Had negative rumours or gossip spread about you
13. Had personal information shared without your permission
14. Received messages that contain abusive language aimed at you
15. Received threatening messages
16. Received messages unfairly questioning your competence
17. Been the only person excluded from social communications between colleagues

Organisational Climate

The terms “organisational culture” (described above) and “organisational climate” are often used interchangeably. However, climate can be understood as a surface manifestation of organisational culture. More in detail, organisational climate has been described as employees’ perceptions of organisational policies, practices, and procedures. Organisational climate also encompasses patterns of interactions and behaviours among employees that support innovation, safety, creativity, or service in the organisation.

The Organisational Climate Measure (OCM)³⁷ consists of 17 scales, each measuring a distinct dimension of organisational climate. For brevity, a selection of relevant items has been reported below. A brief explanation of the organisational climate dimensions is provided below.

Respondents are asked to express their degree of agreement with several items concerning the organisational climate in their workplace (1= Definitely false, 2= Mostly false; 3= Mostly true; 4= Definitely true). Higher scores indicate a positive perception of the organisational climate. Items marked with an asterisk (*) are reversed before a score is calculated.

- **Autonomy:** The degree of freedom that employees are given to do their job.
- **Integration:** The degree of trust and cooperation among employees.
- **Involvement:** The extent to which employees are involved in making decisions.
- **Supervisory support:** The extent to which employees experience support and understanding from their immediate supervisor.
- **Welfare:** The extent to which the organisations value and care for employees.
- **Pressure to produce:** The extent to which employees are pressured to meet targets.

Note: Explanation of survey instrument and dimensions, this should not be included when administering the questionnaire. A selection of these items can be administered in employee surveys to make the questionnaire shorter.

SAMPLE ORGANISATIONAL CLIMATE SURVEY

Autonomy

1. Management let people make their own decisions much of the time
2. Management trusts people to make work-related decisions without getting permission first
3. People at the top tightly control the work of those below them*
4. Management keeps too tight a reign on the way things are done around here*
5. It's important to check things first with the boss before taking a decision*

Integration

6. People are suspicious of other departments*
7. There is very little conflict between departments here
8. People in different departments are prepared to share information
9. Collaboration between departments is very effective
10. There is very little respect between some of the departments in my workplace*

Involvement

11. Management involves people when decisions are made that affect them
12. Changes are made without talking to the people involved in them*
13. People don't have any say in decisions which affect their work*
14. People feel decisions are frequently made over their heads*
15. In my workplace, information is widely shared
16. There are often breakdowns in communication in my workplace*

Supervisory Support

17. In my workplace, supervisors are really good at understanding peoples' problems
18. Supervisors show that they have confidence in those they manage
19. Supervisors here are friendly and easy to approach
20. Supervisors can be relied upon to give good guidance to people
21. Supervisors show an understanding of the people who work for them

Welfare

22. This company pays little attention to the interests of employees*
23. This company tries to look after its employees
24. This company cares about its employees
25. This company tries to be fair in its actions towards employees

Pressure to produce

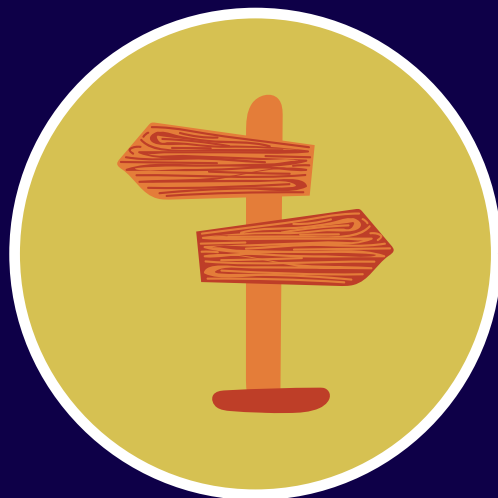
26. People are expected to do too much in a day
27. In general, peoples' workloads are not particularly demanding*
28. Management requires people to work extremely hard
29. People in my workplace are under pressure to meet targets
30. The pace of work in my workplace is pretty relaxed*

SECTION

8



SIGNPOSTING TO DIGNITY AT WORK RESOURCES AND SUPPORTS





1. Chartered Institute of Personnel and Development (CIPD) [Sexual Harassment Guidance](#)
2. Dublin Rape Crisis Centre: [Support Resources](#)
3. Health and Safety Authority (HSA): [Bullying at work](#)
 - a. HSA and WRC: [Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work](#)
4. Health Service Executive: [Bullying and Harassment](#)
5. International Bar Association (IBA): [Bullying and Sexual Harassment Training](#)
6. Irish Congress of Trade Unions (ICTU): [Trade Union Information](#)
7. Irish Equality and Human Rights Commission (IHREC): [Harassment and Sexual Harassment in the Workplace](#)
 - a. [Code of Practice on Sexual Harassment and Harassment at Work](#)
8. Law Society of Ireland: [Employment Law Legal Guides \(Bullying\)](#)
9. Law Society Psychological Services: [LegalMind](#)
10. Mental Health Ireland (MHI): [Mental Health Information](#)
11. National Anti-Bullying Centre (Dublin City University): [Anti-Bullying Training](#)
12. National Disability Authority: [Codes of Practice](#)
13. Workplace Relations Commission (WRC): [Workplace Relations Information](#)

Support for the Legal Profession

LegalMind is a confidential, subsidised mental-health support for Law Society members, those holding a Practising Certificate and Post PPC II Trainees. The service is provided independently by Spectrum.Life, in partnership with Spectrum Mental Health.

LegalMind Dignity at Work Contact Point

You can contact a Dignity at Work contact point at LegalMind to receive support and be directed to information relating to bullying, harassment and or sexual harassment at work. This support is available to anyone who may have been accused of, witnessed or feel they are being bullied, harassed and/or sexually harassed at work.

Contact LegalMind 24/7 by:

- Free-phone 1800 81 41 77
- Text 'Hi' by SMS or WhatsApp to 0353 87 369 0010 for a same day call back (standard rates apply).
- Register for the online portal and find out more at: <http://www.lawsociety.ie/legalmind>

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Law Society Psychological Services invites you to get in touch to share any thoughts on the Dignity Matters Report at ps@lawsociety.ie.

We look forward to working with you.

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