Laws and regulations

1) What is the definition of violence, bullying and sexual harassment in the legislation in your country applicable to the workplace, if any?

Under the Industrial Relations Act 1990, an order enacting Code of Practice Detailing Procedures For Addressing Bullying in The Workplace (Declaration) was introduced in 2002 with the Industrial Relations Act 1990 (Code of Practice Detailing Procedures For Addressing Bullying in The Workplace) (Declaration) Order 2002 (S.I. No. 17/2002). For the purpose of the Code of Practice the definition of workplace bullying is as follows:

“Workplace Bullying is 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 reasonably be regarded as undermining the individual’s right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but, as a once off incident, is not considered to be bullying.”

The Health and Safety Authority are the central co-ordinating State Agency for matters relating to workplace bullying and they have also formulated a Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work. It provides practical guidance for employers.

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2 Available at [http://www.hsa.ie/eng/Publications_and_Forms/Publications/Occupational_Health/CoP_Bullying.pdf](http://www.hsa.ie/eng/Publications_and_Forms/Publications/Occupational_Health/CoP_Bullying.pdf)
on identifying and preventing bullying at work arising from their duties under s. 8 (2) (b) of the Safety, Health and Welfare at Work Act 2005.

The Code refers to a definition of bullying in the following terms:

“Bullying at work has been defined as ‘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 reasonably be regarded as undermining the individual’s right to dignity at work’”.

The Code of Practice further provides that a pattern of the following behaviours are examples of types of bullying. It should be noted that this list is not exhaustive.

- Exclusion with negative consequences
- Verbal abuse/insults
- Physical abuse
- Being treated less favourably than colleagues
- Intrusion – pestering, spying or stalking
- Menacing behaviour
- Intimidation
- Aggression
- Undermining behaviour
- Excessive monitoring of work
- Humiliation
- Withholding work-related information
- Repeatedly manipulating a person’s job content and targets
- Blame for things beyond the person’s control.

Ireland’s Supreme Court has also affirmed that the definition of bullying incorporates a pattern of inappropriate and undermining behaviour. In *Quigley v. Complex Tooling and Moulding Limited* [2008] IESC 44 (Unreported, Supreme Court, 22nd July, 2008) the Supreme Court found that the case had involved bullying as it had met the criteria of being repeated, inappropriate...

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3 Health and Safety Authority, *Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work*, at p.5.

4 The Code of Practice advises that the Code does not aim to address physical assault at work. Instead it advises that where it may be a risk, employers have a dedicated policy on violence and assault with no tolerance of such behaviour.
and undermining of the dignity of the plaintiff at work as set down in the Code of Practice.

Bullying at work when it is related to one of the discriminatory grounds is covered by the Employment Equality Acts. Harassment and bullying at work which is not linked to a discriminatory ground is a health and safety issue.

The Employment Equality Acts 1998-2011 place an obligation on all employers to prevent harassment in the workplace. Sexual harassment and harassment on any of the following grounds – civil status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community – are forms of discrimination in relation to conditions of employment. Bullying which is not linked to one of the discriminatory grounds above is not covered by the Employment Equality Acts.

Section 14a (7) of the Employment Equality Act 2008 as inserted by section 8 of the Equality Act 2004 defines harassment and sexual harassment as follows:

“(7) (a) In this section—

(i) references to harassment are to any form of unwanted conduct related to any of the discriminatory grounds, and

(ii) references to sexual harassment are to any form of unwanted verbal, non-verbal or physical conduct of a sexual nature,

being conduct which in either case 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) Does your country have specific regulations to guarantee the protection of workers against violence, bullying and sexual harassment in the workplace?

While a number of regulations were made under the Safety, Health and Welfare at Work Act 2005 many of these relate to physical safety in the workplace such as exposure to asbestos. However, the Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299/2007) set out the duties and responsibilities on both employees and employers to comply with the provisions of the Act of 2005. An employer has a general common law duty of care to prevent bullying and stress in the workplace. In addition, the safety statement, as required by the Act of 2005, also requires that the employer carry out a risk assessment regarding bullying in the workplace.

Section 20 of the Safety, Health and Welfare at Work Act 2005 requires that an organisation produce a written programme to safeguard:
• the safety and health of employees while they work
• the safety and health of other people who might be at the workplace, including customers, visitors and members of the public.

The possibility of violence towards employees should be addressed in the safety statement which all employers are obliged to have. For example, factors like the isolation of employees and the presence of cash on the premises need to be taken into account. Proper safeguards should be put into place to eliminate the risk of violence as far as possible and the employee should be provided with appropriate means of minimising the remaining risk, for example, security glass. The Health and Safety Authority has published a booklet for employers on violence in the workplace.

The Health and Safety Authority is the central co-ordinating State Agency for matters relating to workplace bullying. In this regard, any individual who has a concern about workplace bullying can contact the Anti-Bullying Response Unit, which is based at the Health and Safety Authority’s Head Office.

An employer is under a duty to take reasonable steps to prevent bullying in the workplace. There should be an anti-bullying policy and established procedures for dealing with complaints of bullying in the workplace. Section 8 (2) (b) of the Safety, Health and Welfare at Work Act 2005 sets out the general duties of employers including

“managing and conducting work activities in such a way as to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees”

and also

“providing the information, instruction, training and supervision necessary to ensure, so far as is reasonably practicable, the safety, health, and welfare at work of his or her employees”

The Code of Practice on Sexual Harassment and Harassment at Work was given approval and legal effect by Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012 (S.I. No. 208/2012). The Code aims to give practical guidance to employers, and employees on how to prevent sexual harassment and harassment at work and how to put procedures in place to deal with it.

**Scope of application**

3) Who has a legal obligation to refrain from all acts of violence and moral or sexual harassment at work? (private and/or public sector - employers, employees, third party?)
Both employees and employers have a legal obligation to refrain from all acts of violence and forms of harassment at work.

Under the Health, Safety and Welfare at Work Act 2005 employers have a duty to provide a safe and healthy work environment with the proper procedures in place to prevent and deal with violence, bullying or harassment.

As an employee the duty is not to engage in improper behaviour which would endanger the health, safety and welfare of yourself or the other employees.

The same duties and responsibilities exist for employees and employers in the public as in the private sector. For those employed in the civil service (i.e. public sector for a governmental department) in Ireland, policies exists which define bullying, harassment and sexual harassment and set out the complaints procedure to be followed.

In addition, the Civil Service Employee Assistance Service is a work-based support service, designed to assist staff in managing personal difficulties. It provides a confidential support and referral service to civil servants, of all grades, on a wide variety of problems and difficulties arising both within and outside the workplace.

An officer who considers that he/she is being harassed, sexually harassed or bullied, and wishes to make a formal complaint should report the matter to their line manager in the first instance. If that is not possible they can approach the Personnel Officer or the Employee Assistance Officer. Complaints are dealt with through informal resolution or, if that is not successful, through mediation or by way of a formal investigation. Civil servants who are found to have harassed, sexually harassed or bullied other staff may be subject to disciplinary action.

Please also see question 2 above for further detail.

**The employer’s obligation**

4) **Is the employer required to put in place a policy to prevent violence, bullying and sexual harassment in the workplace?**

Under the Health, Safety and Welfare at Work Act 2005 employers must ensure the welfare and well being of their employees within the work environment. Employers are required to have an anti-bullying policy in place and established procedures for dealing with complaints of bullying in the workplace.

An employer should also have a policy and procedures to deal with and prevent harassment at work. The policy should set out what constitutes
unacceptable behaviour at work. An effective grievance or complaints procedure should be in place to deal with complaints about harassment. All employees must be made aware of these policy and procedures. The Code of Practice on Sexual Harassment and Harassment at Work given legal effect in the Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2002 (S.I. No. 78 of 2002) aims to give practical guidance to employers and employees on how to prevent sexual harassment and harassment at work and how to put such procedures in place to deal with it.

See Question 5 for further detail of what must be included in the policy.

5) Does the employer have to conduct a risk analysis taking into account the nature of his activities and the size of his business? What are the minimum preventive measures that he has to provide?

Section 19 of the Safety, Health and Welfare at Work Act 2005 requires that employers and those who control workplaces to any extent must identify the hazards in the workplaces under their control and assess the risks to safety and health at work presented by these hazards.

Employers must examine and write down these workplace risks and what to do about them. Ultimately, assessing risk means that anything in the workplace that could cause harm to your employees, other employees and other people (including customers, visitors and members of the public) must be carefully examined. This allows you to estimate the magnitude of risk and decide whether the risk is acceptable or whether more precautions need to be taken to prevent harm.

Employers are required to implement any improvements considered necessary by the risk assessment. The aim is to ensure that no one gets hurt or becomes ill.

However, in identifying hazards and assessing risks, employers should only consider those which are generated by work activities. There is no need to consider every minor hazard or risk that we accept as part of our lives.

The results of any Risk Assessments should be written into the Safety Statement.

Section 20 of the Safety, Health and Welfare at Work Act 2005 requires that an organisation produce a written programme to safeguard:

- the safety and health of employees while they work
- the safety and health of other people who might be at the workplace, including customers, visitors and members of the public
The Safety Statement represents a commitment to their safety and health. It should state how the employer will ensure their safety and health and state the resources necessary to maintain and review safety and health laws and standards. The Safety Statement should influence all work activities, including:

- the selection of competent people, equipment and materials
- the way work is done
- how goods and services are designed and provided

It is essential to write down the Safety Statement and put in place the arrangements needed to implement and monitor it. The Safety Statement must be made available to staff, and anyone else, showing that hazards have been identified and the risks assessed and eliminated or controlled.

6) How are employees informed of the risks, the preventive measures and the procedures applicable to the victims of violence and moral or sexual harassment at work?

An employer is legally responsible for the sexual harassment and harassment suffered by employees in the course of their work unless he/she took reasonably practicable steps to prevent sexual harassment and harassment from occurring, to reverse the effects of it and to prevent its recurrence. Employers who take the steps set out in the code to prevent sexual harassment or harassment, to reverse the effects of it and to prevent its recurrence, may avoid liability for such acts in any legal proceedings brought against them. Such a policy should include some vital information as follows:

(1) The policy should begin by declaring:

(a) the organisation’s commitment to ensuring that the workplace is free from sexual harassment and harassment

(b) that all employees have the right to be treated with dignity and respect

(c) that complaints by employees will be treated with fairness and sensitivity and in as confidential a manner as possible

(d) that sexual harassment and harassment by employers, employees and non-employees such as clients, customers and business contacts will not be tolerated and could lead to disciplinary action (in the case of employees) and other sanctions, for example the suspension of contracts or services, or exclusions from premises (in the case of non-employees).
(2) Definitions and Scope

(a) the policy should set out definitions of sexual harassment and harassment which are simple, clear and practical;
(b) a non-exhaustive list of examples should be provided;
(c) the policy should state that the protection extends to:
   — sexual harassment and harassment by co-workers, clients, customers and other business contacts
   — beyond the workplace to conferences and training and may extend to work-related social events
   — different treatment of an employee because he/she has rejected or accepted the sexual harassment or harassment
   — employment agencies and vocational training;
(d) the policy should emphasise that it is up to the employee to decide what behaviour is unwelcome irrespective of the attitude of others to the matter;
(e) the policy should state that employees who, for example, make a complaint, support a complainant, or who give evidence in proceedings, will not be victimised.

(3) Allocation of responsibilities under the Act. The policy should state that management and others in positions of authority have a particular responsibility to ensure that sexual harassment and harassment does not occur and that complaints are addressed speedily. The policy should state that in particular management will:

   — provide good example by treating all in the workplace with courtesy and respect
   — promote awareness of the organisation’s policy and complaints procedures
   — be vigilant for signs of harassment and take action before a problem escalates
   — respond sensitively to an employee who makes a complaint of harassment
   — explain the procedures to be followed if a complaint of sexual harassment or harassment is made
   — ensure that an alleged perpetrator is treated fairly
   — ensure that an employee making a complaint is not victimised for doing so
— monitor and follow up the situation after a complaint is made so that sexual harassment or harassment does not recur.

7) Is the employer required to appoint persons with specific skills to deal with cases of violence and moral or sexual harassment at work?

There is a Code of Practice on Sexual Harassment and Harassment at Work. Trade unions can play a role in the prevention of sexual harassment and harassment in the workplace through their participation in the development and implementation of policies and procedures, through their information and training services, and through the collective bargaining process. Trade unions may also play a role in providing information, advice and representation to employees who have been sexually harassed or harassed, and to employees against whom allegations of sexual harassment and harassment have been made.

Employees may contribute to achieving a harassment-free environment through co-operating with management and trade union strategies to eliminate sexual harassment and harassment, and that sexual harassment and harassment by employees constitutes misconduct and may lead to disciplinary action. The policy should also emphasise that employees must conduct themselves so as to respect the rights of others to dignity in the workplace.

The policy should include a commitment to review on a regular basis in line with changes in the law, relevant case law or other developments. A competent person should be designated to ensure that monitoring, training and reviews occur.

Those carrying out an investigation into a complaint should not be connected with the allegation in any way. It is preferable that at least two people should investigate a complaint but it is acknowledged that this may not always be practicable. Such an investigation team should have gender balance and ideally should seek to ensure diversity across the other eight grounds. All of those on the investigation team should have received appropriate training. Every effort should be made to resolve the complaint speedily. External assistance may be necessary to deal with complaints in some circumstances so as to ensure impartiality, objectivity and fairness in an investigation.

9. What are the ways of actions available to the victims?

- Internal procedures in the enterprise?
- External procedures?
- Legal remedies before the court?
Employment Equality legislation

The Employment Equality Acts 1998-2011 place an obligation on all employers to prevent harassment in the workplace. Sexual harassment and harassment on any of the following grounds – civil status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community – are forms of discrimination in relation to conditions of employment. Bullying which is not linked to one of the discriminatory grounds above is not covered by the Employment Equality Acts.

Internal Procedures


Policy and Complaints procedure under the Code of Practice

Most recipients of sexual harassment or harassment simply want the harassment to stop. The complaints procedure should provide for informal and formal methods of resolving problems. The procedure should provide for a competent named person to be available to assist in the resolution of any problems through informal means and to provide information to both employees and non-employees on the procedure and on the policy in general.

Informal Procedure

The employee who is being sexually harassed or harassed should object to the conduct where this is possible and appropriate. The informal procedure should provide that employees should attempt to resolve the problem informally in the first instance. In some cases it may be possible and sufficient for the employee to explain clearly to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends them or makes them uncomfortable and that it interferes with their work.

In circumstances where it is too difficult for an individual to do this on his/her own, an alternative approach would be to seek support from, or for an initial approach to be made by, a sympathetic friend or designated person or trade union representative.
The informal process could provide for mediation.

**Formal Complaints Procedure**

The complaints procedure should provide for a formal complaints procedure where:

- the employee making the complaint wishes it to be treated formally or
- the alleged sexual harassment or harassment is too serious to be treated under the informal procedure or
- informal attempts at resolution have been unsatisfactory or
- the sexual harassment or harassment continues after the informal procedure has been followed.

**Investigation of the complaint**

The procedure should provide that investigation of any complaint will be handled with sensitivity and with due respect for the rights of both the complainant and the alleged harasser. The investigation should be, and be perceived to be, independent and objective. The purpose of the investigation is to investigate the allegations and will focus on the complaint.

Those carrying out the investigation should not be connected with the allegation in any way. It is preferable that at least two people should investigate a complaint but it is acknowledged that this may not always be practicable. Such an investigation team should have gender balance and ideally should seek to ensure diversity across the other eight grounds of discrimination under the act. All of those on the investigation team should have received appropriate training. Every effort should be made to resolve the complaint speedily. The procedure should provide that both the complainant and alleged harasser should be informed of the following:

- what the formal procedure entails and the relevant time limits
- that both parties have the right to be accompanied and/or represented, by a representative, trade union representative or a friend or colleague
- that the complaint should be in writing and that the alleged harasser be given full details in writing of the nature of the complaint including written statements and any other documentation or evidence including witness statements, interview notes or records of meetings held with the witnesses
- that the alleged harasser be given time to consider the documentation and an opportunity to respond
that confidentiality will be maintained throughout any investigation to the greatest extent consistent with the requirements of a fair investigation

that a written record will be kept of all meetings and investigations

that the investigation having considered all of the evidence before it and the representations made to it will produce a written report to both parties outlining its findings and the reasons for its final decision

if the complaint is upheld against an employee the report will recommend whether the organisation’s disciplinary procedure should be invoked if the complaint is upheld against a non-employee the report should recommend appropriate sanctions against the non-employee or his/her employer which could extend where appropriate in the circumstances to
  o exclusion of the individual from premises
  o suspension or termination of service
  o suspension or termination of a supply service or other contract

the report may also, or as an alternative, recommend other actions such as the more effective promotion of the organisation’s policy on sexual harassment and harassment or training

if a right of appeal exists both parties should be informed of it and the time limits and procedures involved.

It is the responsibility of the employer to provide for proper notification of the complaint and fair determination of the complaint. What is required in any particular instance will depend on the circumstances and/or complexity of the case and may require the adaptation of the procedures.

Non-Employees

It is possible that if the person accused of sexual harassment or harassment is not an employee, he/she will not wish to participate in the formal procedure, and it will not be possible to secure their participation. Nonetheless a non-employee must be kept informed of all developments and given an opportunity to respond to them. The outcome of the investigation and any potential sanctions must also be explained to the non-employee and/or any person or company for whom he/she works.

External Procedures

Sometimes internal mechanisms may not be sufficient in addressing the complaint. In some cases the person who is responsible for dealing with such
complaints may also be the perpetrator of the harassment (for example, the victim’s manager).

The Equality Tribunal investigates and/or mediates disputes in relation to the implementation of the employment equality legislation. If a victim feels that his/her complaint about harassment on one of the discriminatory grounds has not been dealt with properly by his/her employer, the victim can make a complaint under employment equality legislation using the new online complaint form (available by selecting ‘Make a complaint in relation to employment rights’ on www.workplacerelations.ie).

A complaint of sexual harassment or harassment on any of the other grounds may be made to the Office of the Director of Equality Investigations who may refer the complaint to an Equality Officer or, with the parties agreement, for mediation.

All dismissal claims (including constructive dismissal) under the Employment Equality Act are heard by the Labour Court. In sexual harassment claims (and all gender claims) the employee may bypass either of the above and refer the matter to the Circuit Court.

A complaint must be made within 6 months of the alleged incident of sexual harassment or harassment or the latest incident of such harassment. This may be extended to up to 12 months if “reasonable cause” for the delay can be shown. If a person is unable to pursue a claim effectively because of an intellectual or physiological disability a parent, guardian or other person acting on behalf of the complainant can bring a complaint.

The maximum that can be awarded by the Office of the Director of Equality Investigations and the Labour Court is 104 weeks pay. However, section 82(3) provides that no enactment relating to the jurisdiction of the Circuit Court shall be taken to limit the amount of compensation which may be awarded by the Circuit Court. The Labour Court or the Circuit Court may order reinstatement or re-engagement.

Time limits and Remedies under the Employment Equality Act are set out in sections 74 -93.

Health and safety at work

Bullying in the workplace can affect both the safety and the health of employees. Under the Safety, Health and Welfare at Work Act 2005 employers have a duty to ensure the health and safety of their employees in the workplace. Under section 8 of the Act your employer is required to “prevent any improper conduct or behaviour likely to put the safety, health and welfare of employees at risk”. The duty of an employee is not to engage
in improper behaviour which would endanger the health, safety and welfare of yourself or the other employees.

The Health and Safety Authority works to ensure that workplace bullying is not tolerated and that employers have procedures for dealing with bullying at work. It provides information and advice on bullying and is responsible for the Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work. This Code sets out guidance notes for employees, employers and trade unions on dealing with bullying in the workplace.

An employer must take reasonable steps to prevent bullying in the workplace. There should be an anti-bullying policy and established procedures for dealing with complaints of bullying in the workplace. An employer should deal with such complaints immediately. The Labour Relations Commission has also published a Code of Practice detailing Procedures for Addressing Bullying in the Workplace.

Complaints under the Employment Equality Acts and the Safety, Health and Welfare at Work Act must be brought within 6 months.

Other Legal Remedies

Criminal law

Harassment is an offence under section 10 of the Non-Fatal Offences Against the Person Act 1997, which states:

“(1) Any person who, without lawful authority or reasonable excuse, by any means including by use of the telephone, harasses another by persistently following, watching, pestering, besetting or communicating with him or her, shall be guilty of an offence.

(2) For the purposes of this section a person harasses another where—

(a) he or she, by his or her acts intentionally or recklessly, seriously interferes with the other’s peace and privacy or causes alarm, distress or harm to the other, and

(b) his or her acts are such that a reasonable person would realise that the acts would seriously interfere with the other’s peace and privacy or cause alarm, distress or harm to the other.”

Depending on the form bullying takes, it may be an offence under criminal legislation (for example, if it is violent it may constitute an offence under the Non-Fatal Offences Against the Person Act 1997).
Tort and Contract

If the bullying or harassment at work is so great that it causes the victim’s health (physical or psychological) to suffer or be affected, he/she may also be entitled to bring a claim for compensation for personal injury. A person cannot seek compensation from his/her employer under the health and safety legislation but he/she can make a personal injury claim through InjuriesBoard.ie.

Additionally, the employee may also have a right of action in contract law (for breach of contract). The right of action in tort and contract may extend to psychological or psychiatric injuries in certain circumstances.

10. Who can take an action (the worker and/or the employer, colleague workers of the victim, others persons in contact with the victim, the union representative or the agent of an organization of employers, etc.)?

The victim can take an action under the Employment Equality Act 1998 or tort law. The victim may report harassment to the gardaí and a decision may be made to prosecute the alleged perpetrator.

11. Who bears the burden of proof of the violent acts and moral or sexual harassment at work?

In the civil context, where a complaint is made by an individual, that individual bears the burden of proof. In civil matters, the standard of proof is on the balance of probabilities.

The intention of the perpetrator of sexual harassment or harassment is irrelevant; it is the effect of the behaviour on the employee that is relevant.

Where criminal prosecutions are instituted, for example in the case of harassment contrary to the Non-Fatal Offences Against the Person Act, 1997, the burden of proof rests with the Director of Public Prosecutions. The standard of proof is that of the higher standard required in criminal matters – beyond all reasonable doubt.

12. In order to avoid reprisals at work, is there special protection provided for the victim and the witnesses? Specify the nature and duration of the special protection.

Employers may have a specific policy in relation to protection of the victim and witnesses.
If a complaint is upheld against an employee the report will recommend whether the organisation’s disciplinary procedure should be invoked.

If a complaint is upheld against a non-employee the report should recommend appropriate sanctions against the non-employee or his/her employer which could extend where appropriate to:

- exclusion of the individual from premises
- suspension or termination of service
- suspension or termination of a supply service or other contract
- the report may also, or as an alternative, recommend other actions such as training, or more effective promotion of the organisation’s policy on sexual harassment and harassment.

What about any improper use of the procedures?

13) What would be the consequences for a worker who has abused the procedure put in place to combat violence and moral or sexual harassment at work?

There is no formal sanction in Irish employment law to punish a person for instituting frivolous or vexatious proceedings involving workplace harassment. However, depending on the nature of any allegations made or the degree of malicious intent involved in the institution of proceedings, a person who takes proceedings in such circumstances may themselves face disciplinary action from their employer or may in some circumstances be liable for damages in defamation. However, a common principle among the various employment law statutes is the adherence to fair procedures, and so it is likely that in order for there to be any significant negative consequences for the taking of an action in abuse of process, a high degree of malice would need to be clearly established, so as not to disincentivise genuine cases from being taken.

Supervision and sanctions

14) Who is responsible for monitoring the measures put in place to combat violence and moral or sexual harassment at work?

The following is an extract from The Code of Practice on Sexual Harassment and Harassment at Work given legal effect through Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012 (S.I. No. 208/2012).

“Employers are legally responsible for the sexual harassment and harassment of employees carried out by co-employees, clients,
customers or other business contacts of the employer. It is a defence for the employer to prove that he/she took reasonably practicable steps to prevent:

— the employee from being harassed
— the employee from being treated differently in the workplace or in the course of employment and, if and so far as any such treatment has occurred, to reverse the effects of it.”

In order to rely on this defence, employers must show that they have comprehensive, accessible, effective policies that focus on prevention, best practice and remedial action, and also accessible effective complaints procedures. The measures taken to put the policies and procedures into practice will also be taken into account by courts and tribunals: employers will not be able to rely on an excellent policy if it has not been effectively implemented. The core elements of a policy and complaints procedure are outlined in Parts (4) and (5) of this code.

Thus, generally speaking, an employer will be liable for acts of harassment which occurs in their workplace. However, they will have a defence where they can show that they have implemented and maintained sufficient and reasonable measures to prevent such action. The burden for ensuring the ongoing adherence to these measures will therefore fall on the employer.

15) What are the sanctions applicable to perpetrators of violence and moral or sexual harassment at work?

The following is an extract from The Code of Practice on Sexual Harassment and Harassment at Work given legal effect through the Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012 (S.I. No. 208/2012).

— if the complaint is upheld against an employee the report will recommend whether the organisation’s disciplinary procedure should be invoked
— if the complaint is upheld against a non-employee the report should recommend appropriate sanctions against the non-employee or his/her employer which could extend where appropriate to:
  • exclusion of the individual from premises
  • suspension or termination of service
  • suspension or termination of a supply service or other contract
• the report may also, or as an alternative, recommend other actions such as training, or more effective promotion of the organisation’s policy on sexual harassment and harassment.

The sanctions available to deal with acts of harassment can extend right through the entire range of sanctions in employment law, up to and including dismissal. Depending on the nature of the offending conduct, it is also possible for the perpetrator to face criminal prosecution for their acts.