



# The new Bullying at Work Act - An Introduction

The much anticipated Employment (Bullying at Work) Act (“the Act”) came into force in Gibraltar on 18th September 2014. Essentially it prohibits bullying and victimisation in employment and, in this short briefing, we provide a description of the Act’s provisions. It is obviously with some trepidation that we welcome the coming into force of this the Act and await the litigation that may ensue as a result.

## Key Provisions

The Act specifies that the term “bullying” means where “a person (‘A’) subjects another person (‘B’) to bullying where A engages in conduct which has the purpose or effect of causing B to be alarmed, distressed, humiliated or intimidated.” We are told that conduct includes: persistent behaviour which is offensive, intimidating, abusive, malicious or insulting; persistent unjustified criticism; punishment imposed without justification; and changes in duties or responsibilities of person B to his detriment and without reasonable justification.

We think you will agree that the guidance on what conduct constitutes bullying at work is very interesting and we can clearly see how it might be interpreted. However, you can of course take reasonable action to manage and direct your employees.

“Victimisation” is defined under the Act as follows: “a person (‘A’) victimises another person (‘B’) if A treats B less favourably than A treats or would treat other persons in the same circumstances” and does so because of A’s knowledge or suspicion that B has, for example, brought or intended to bring, or intends to bring, proceedings under the Act etc. An act falling within the scope of the definition of victimisation can include things like dismissal or detrimental treatment etc.

Bullying as defined by the Act has quite a wide reach in that bullying can be said to include where a third party bullies B in his employment and where you the employer fail to take reasonable steps to prevent such bullying by a third party. For this purpose, a third party is someone other than you, the employer, or one of your employees, which means that the third party could well be a supplier or customer, for example.

## Why is it important to take action anyway?

Ultimately, if bullying is a reality in the organisation, it can have a very serious effect on morale and employee relations, on performance and productivity, on employee retention rates and absences from work. It can of course, also cause reputational damage and, last but not least, there is an obvious risk of legal claims which, if successful, could result in significant compensation awards including awards for injury to feelings.

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## How should complaints of bullying generally be dealt with?

What do you do if a complaint is made? Good practice suggests the following:

- a) Investigate the complaint promptly and always be objective in how you deal with a complaint. Every complaint should, naturally, be treated seriously. For obvious reasons your investigatory process will need to be undertaken in an independent and objective manner and this will help when you then need to take a decision as to whether and what action needs to be taken.
- b) Ensure that you consider all aspects of the complaint and all circumstances before making a decision. The perception of the complainant might also be relevant and try to work out whether what has taken place could reasonably be considered to have caused offence.
- c) Consider also that, on occasion, it might be possible to rectify matters informally.
- d) Mediation as a tool to deal with interpersonal matters in the workplace continues to attract a growing number of proponents and there can be no doubt that, where appropriate, the use of an independent third party mediator can be of great help to resolve a complaint. The parties do, however, need to enter the process of mediation voluntarily, understanding the process. For further information see panel overleaf.
- e) Some organisations find that offering a counselling service plays a vital role in how such complaints are handled and counselling can prove beneficial even in those cases where the company decides not to take disciplinary action.

f) We know that it is not always possible to resolve a complaint informally, so where this is not possible or if it is not an option, you may then decide to invoke your formal disciplinary process.

### How can you defend yourself against legal claims of bullying?

The Act states that you may have a defence to an allegation of bullying where:

- (a) at the time of the act(s) complained of you had in place a Bullying at Work Policy (discussed below) and you took all reasonable steps to implement and enforce that Policy; and
- (b) as soon as reasonably practicable “you take all steps as are reasonably necessary to remedy any loss, damage or other detriment suffered” as a result of the act(s) complained of.

### Bullying at Work Policy

Given the above, we strongly recommend that you now re-visit your existing bullying policy, assuming you have one (!) to ensure that it contains all of the elements set out in the Schedule to the Act (and set out in full below). If you do not already have such a policy in place then you will need one, and fast!

Your policy **MUST** be in writing and distributed to every employee. The policy **MUST** also include the following provisions:

- 1) It must provide an explanation of employees’ rights not to be bullied and victimised and provide a statement to the effect that it will not be tolerated. Be sure to use examples of different types of bullying behaviour at work and conduct that may lead to disciplinary action;
- 2) The policy must provide comprehensive and detailed explanation of the complaints procedure within your place of work. Ensure that you state that all complaints will be taken seriously and investigated thoroughly and dealt with in confidence and that the complainant may be represented by a representative of his/her choice at all stages of the process. Also specify the contact details of the person whom employees may contact should they have any complaints;
- 3) By the same token, the policy must give a clear statement of the disciplinary procedure that will be followed against employees who breach the policy;

- 4) Details of designated persons available to counsel and assist etc both those bringing complaints and also those who are the subject of a complaint (including their names and telephone contact numbers of those designated persons) should be set out;
- 5) Ensure that arrangements are put into place to train those in managerial positions about the policy and generally inform all employees about the policy. Further the policy should stipulate that these steps are being taken;
- 6) The policy should state that it will be monitored annually and a report placed before senior management including a summary of complaints made under the policy. In making the report the names of complainants must of course be kept confidential unless the complainants agree to such disclosure; and
- 7) The policy should stipulate that arrangements for consultations with trade unions, safety representatives and/or other stake holders are in place regarding the operation of the policy, its implementation and any revision to the policy that is needed in light of its operation in practice.

### Mediation in the workplace

Workplace mediation is an interpersonal type of mediation which is a voluntary, non-binding, confidential and without prejudice process which can be used to resolve disputes within a workplace. A Mediator’s role is to attempt to bring the two conflicted parties together, facilitate communication and aid the parties in reaching settlement by agreement.

The mediator does not sit in judgment of the matter, one of the key benefits of mediation, allowing parties to work towards settlement without focusing on establishing who is right or wrong. Mediation can prove useful in the context

of bullying, discrimination or harassment claims in the work-place. Disputes can range from minor misunderstandings to more complex issues such as disputes between management and employees. However, it is important to note that certain types of actions might require a more thorough investigation or disciplinary.

ISOLAS offers a mediation service for both commercial and interpersonal mediation disputes. This service is offered to both its clients and to third party companies and we would be pleased to provide further information on the benefits of using mediation. Contact Marisa Hernandez at [marisa.hernandez@isolas.gi](mailto:marisa.hernandez@isolas.gi)



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