



Royal College
of Nursing

The voice of nursing in the UK

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Equality Act 2010: Consultation on employer liability for harassment of employees by third parties

Introduction

With a membership of over 400,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing of the United Kingdom (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations. The Royal College of Nursing welcomes the opportunity to respond to the consultation on the employer liability for harassment of employees by third parties.

Main points

The Royal College of Nursing remains deeply concerned at the proposal to remove this protection from vulnerable workers. The NHS (England) Staff survey 2011 reveals that 15 per cent of employees who responded to the survey indicated that they had been subjected to discriminatory behaviour from patients, relatives or carers in the previous 12 months. The RCN's own employment survey¹ of the same year provides

¹ Views From the Frontline

http://www.rcn.org.uk/data/assets/pdf_file/0020/408206/Members_employment_survey_Sept_11_FINAL.pdf

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clear evidence that 30 per cent of respondents reported experiencing bullying and harassment from a patient or client or member of their family.

Although we are not in a position to offer a detailed breakdown of the number or type of cases that have progressed to tribunal regarding this particular protection, anecdotal evidence from our accredited representatives and caseworkers strongly suggests that this provision has been used in partnership discussions with employers on health and safety policies. This demonstrates that it provides essential protection for vulnerable workers such as lone workers,

It is our view that this provision is therefore part of an important suite of tools to provide essential protection against harassment in the workplace, particularly for those employees involved in front-line health care provision. It is precisely this group of employees as well as others that require clear and robust protection from harassment.

The Royal College of Nursing remains unconvinced that the other remedies available to workers who have experienced harassment by a third party are sufficient to ensure adequate and appropriate redress and protection. The other remedies mentioned in the consultation are a common law claim for negligence, breach of health and safety legislation, a claim under the Protection from Harassment Act, and a constructive dismissal claim. It remains our view that none of these is entirely satisfactory for the following reasons.

- A negligence claim requires physical or psychological injury to have resulted from the harassment itself which is notoriously hard to prove and is likely to have the impact of closing down avenues to seeking justice for the most vulnerable workers.
- Health and safety legislation is not generally directly enforceable by the employee
- A Protection from Harassment Act claim can be made directly against the harasser but not against the employer. This may have the effect of placing the harassed employee at further risk of harm.
- A constructive dismissal claim requires the harassment victim to resign. As the impact assessment acknowledges, resignation is "highly unlikely" and leaves little room for satisfactory remedy for the employee.

The consultation document presumes that it is the lack of tribunal cases that demonstrates that the third-party harassment provisions are unnecessary. The Royal

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College of Nursing contends that in fact, it is the reverse. We assert that it is this very provision that encourages employers to action and pre-empt risk before litigation becomes necessary.

We are also concerned that the consultation document overstates the financial cost of the third-party harassment provision as it quotes just the upper figure originally used in the equality impact assessment for the Equality Bill.

We trust that our response to this particular consultation is clear and we would welcome the opportunity to discuss our comments with you in further detail. Please contact Wendy Irwin, Head of Equality at wendy.irwin@rcn.org.uk for further information or alternatively telephone 0207 647 3486.

Yours sincerely



pcp
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