



Equality Act 2010 – employer liability for harassment of employees but third parties.

1. Questions for Employees

N/A

2. Question for employers

N/A

3. Question for those advising or acting for employers/ employees

Have you ever advised or acted for a) an employer who has had an allegation of third party harassment claim brought against it; or b) an employee claiming to been the subject of conduct which would count as third party harassment? If yes, please give details.

Yes, UNISON represents members claiming to have been subject of discrimination. This includes members who have in its subjects to third party harassment. Many of our members work in client/service user roles such as healthcare, professionals and assistants, social workers, teachers, council staff etc. Our solicitors report the following examples by way of illustration:

Three UNISON members were constantly racially abused by patients in a mental health hospital where they worked as nurses. The perpetrators were two specific individuals on a specific ward. The Claimants requested to work shifts where they would not come into contact with the two individuals. The employer refused to change the Claimant's shifts or take any action against the perpetrators.

The claims were settled prior to the full hearing for £3,000 for each Claimant and an undertaking from the NHS Trust that action will be taken to protect the Claimants' from further acts of harassment.

An anecdotal example of third party harassment involved a secondary school teacher and UNISON member who was subjected to sustained harassment with the use of social networking by students. The students setup a fake Facebook profile to harass the teacher by creating false information and denigrating the teacher's reputation.

In addition, UNISON has other examples of its members experiencing serious and protracted homophobic harassment from a sectioned patient.

4. Do you agree or disagree that the third party harassment provision should be repealed? Please explain your answer.

We strongly disagree that the third party harassment provision should be repealed. We find the governments rationale for contemplating this to be confusing and contradictory. On the one hand it is said that such a provision places a significant burden on business but on the other only one case has been brought in the Employment Tribunal under Section 40 of the Equality Act 2010. Both claims cannot be correct. If there has only been one case in this provision, it cannot be said that this presents a burden upon employers. If however, more matters have been brought before the Tribunal but have been settled, then this is evidence of the need for such a provision. In any event, given the provision came into force in October 2010, it is far too early for the Government to draw meaningful conclusions on this provision.

We consider that any repeal of this provision would be a regressive step. Protection from third party harassment is an important protection to employees and is underlined by the fact that it was included in the Equality Act in order to address the deficiencies in the law created by the well known case of *Burton v De Vere Hotels*.¹

We note that one of the reasons given for removing the provision is that it is an unworkable requirement for the employer to protect staff from third parties who repeatedly engage in unlawful discriminatory conduct over whom they have no direct control. It is estimated that the provision's repeal would save £0.3 million. We disagree that the provision is unworkable. The provision is fairly straight forward. The employer must take reasonable steps such as placing signs in public spaces indicating their lack of tolerance for discrimination against their staff as are frequently seen displayed in doctor's surgeries, hospitals, on public transport and in shops nationwide. The employer should take steps where staff are abused, which is not unreasonable or onerous. We fail to see how any

¹ [1996] IRLR 596

reasonable and/or responsible employer would object to such provision. We are also bemused by the suggestion that such a backward step is required for what is ultimately a modest saving of £0.3 million when placed in a wider economic and social context. The cost to employees of such harassment must be balanced against such a figure (if indeed this is accurate) and in our view the cost to employees is simply far too high in exchange for such a small monetary saving.

We consider that removing the provision in the current economic climate will be highly detrimental to employees with protected characteristics given the increasing evidence that discrimination generally and hate crimes are increasing – for example, see the recent increase in disability hate crime.²

5. If this provision were removed, is there any other action that they Government should take to address third party harassment at work? Please explain your answer.

UNISON strongly opposes the removal of these provisions. We do not consider that there is any appropriate alternative provision to the existing legislation which would have the intended effect.

6. Can you provide any further data or examples of costs and benefits which have not already been included in the Impact Assessment? Do you have any comments on the assumptions, approach or estimates we have used?

UNISON supports the TUC submission in relation to this question.

7. How many third party harassment cases would you expect to be brought each year if the third party harassment provisions were retained? Please explain your answer.

UNISON supports the TUC submission in relation to this question.

8. Does the consideration of the impact on equality in the impact assessment properly assess the implications for people with each of the protected characteristics? If not, please explain why.

UNISON supports the TUC submission in relation to this question.

² <http://www.independent.co.uk/news/uk/crime/hate-crimes-against-disabled-people-soar-to-a-record-level-7858841.html>

9. Does the justice impact test in the impact assessment properly assess the implications for the justice system. If not, please explain why.

UNISON supports the TUC submission in relation to this question.

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