

Equality Act 2010: consultation on employer liability for harassment of employees by third parties (Home Office)

Joint Submission from the Disability Charities Consortium 7th August 2012

About us

The Disability Charities Consortium (DCC) is an informal coalition of seven disability charities: Action on Hearing Loss, Disability Rights UK, Leonard Cheshire Disability, Mencap, Mind, RNIB and Scope. We work on issues of joint concern, including disability discrimination legislation. This response is also supported by NAT (National AIDS Trust).

Our response will focus on key issues that relate to disabled people.

Introduction

We welcome the opportunity to comment on the consultation on employer liability for harassment of employees by third parties.

We disagree entirely that the third party harassment provision can be discounted as serving no useful purpose as stated in the ministerial foreword.

According to a survey by the Department for Business, Innovation and Skills¹, “the disabled and those with a long standing condition were 96 per cent more likely to have employment problems” and “those who were disabled were more than twice as likely to report bullying and harassment.”

Research by the Equality and Human Rights Commission found that the scale of harassment of disabled people generally was not adequately recognised².

Section B: what might be the impact of repealing this provision? (for all respondents)

Question 4: Do you agree or disagree that the third party harassment provision should be repealed?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

We do not agree that the third party harassment provision should be repealed. It is vital that disabled people are protected in the workplace from all forms of harassment, whether this comes from colleagues, managers, employers or indeed, as this provision covers, from a third party such as customers or members of staff from another organisation. We do not understand why disabled people will be protected from harassment within their organisation through the Equality Act, but not externally. We believe that this will send out the wrong message that harassment by third parties is acceptable and therefore that employers do not need to take any action to prevent or stop this.

¹ Fevre, R., Nichols, T, Prior, G. and Rutherford, I (2009) Fair treatment at work report, findings from the 2008 survey. Department for Business, Innovation and Skills.

² Equality and Human Rights Commission (2011) Hidden in plain sight: inquiry into disability related harassment.

This is yet another aspect of the general trend that is undermining access to justice around discrimination e.g. introducing fees to employment tribunals, cuts to legal aid funding, etc. The Government wants to reduce the numbers of people on disability benefits but any provisions to ensure the workplace will actually be supportive of people with disabilities and health conditions are being removed.

Access to employment is already difficult for disabled people. For example we know that less than 7% of people with a learning disability known to social services are in any form of paid employment³, despite at least 65% of people with a learning disability wanting to work⁴. Removing existing protections for disabled people in the workplace is only going to make this situation worse.

We share the Equality and Diversity Forum's (EDF) concerns that the abolition of this provision may contravene European law. Please see the EDF response for further detail on this issue.

We also have concerns about the assumption that there are alternative provisions in place to protect employees from harassment by third parties. For example, the Health and Safety act is not directly enforceable by employees. For constructive dismissal, this requires the employee to resign from their position and the Protection from Harassment Act would not hold the employer to account, only the harasser.

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

Disabled people need to be protected from third party harassment at work. There is much evidence to demonstrate ongoing discrimination against disabled people and therefore we feel the government needs to take a proactive stance on this.

The Office of Disability Issues published a report on the public perceptions of disabled people⁵. In 2009 79% of people thought there was some prejudice towards disabled people. The report also states that "whilst few people reported openly negative views, many respondents expressed views that suggest they see disabled people as less capable than non-disabled people."

Furthermore a survey carried out in 2011 found that more than half of disabled people say they have experienced hostility, aggression or violence from a stranger because of their condition or impairment⁶.

³ Social Care and Mental Health Indicators from the National Indicator Set – 2010-11 Final release, March 2012

⁴ Emerson, E. (2005) Adults with learning difficulties in England 2003/4. Institute for Health Research, Lancaster University

⁵ Staniland, L. (2010) Public Perceptions of Disabled people. Evidence from the British Social Attitudes Survey 2009. Office for Disability Issues, HM Government.

⁶ ComRes survey, commissioned by disability charity Scope, of more than 2,500 disabled people (2011)

We suggest the development of guidance for employers on third party harassment to encourage best practice. This could be developed between government, the Equality and Human Rights Commission (EHRC) and third sector organisations.

Conclusion

We are extremely concerned with the government's proposal to remove the third party harassment provisions from the Equality Act and we do not believe the alternative provisions are adequate to protect the most vulnerable people. We are also deeply worried that the government's continued attempts to review and remove key elements of equality legislation will send out a negative message that discrimination and harassment are acceptable. We urge the government to reconsider their proposals and ensure that disabled people are fully protected in law from third party harassment.

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