Discrimination, harassment and bullying in Covid times

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With most people currently working from home (if they are working at all), employers might be forgiven that the risk of discrimination or bullying at work arising is much diminished.

Maybe not?

Employers should not become complacent as a workforce working from home presents several challenges. Below we look at the five main questions facing employers in this sphere.

Visibility/Supervision

Having employees working from home means that there is very much less visibility over what they are actually doing. If there are

more individual calls or video meetings which are seen by fewer people, there are unfortunately opportunities for unspotted discrimination, harassment or bullying to take place. The law already makes it clear that an employer is vicariously liable for the conduct of their employees and this does not disappear because the employees are remote working. This is covered in two particular pieces of legislation, one intended to cover employees (the Equality Act 2010) and another was originally designed as a criminal offence to try to clamp down on stalking in the late 1990s (the Prevention of Harassment Act 1997).The former needs the harassment to be connected to a "protected characteristic" (race, sex, disability, age, religion, sexual orientation or marriage). The latter simply requires two or more instances or harassment or bullying without the need for them to be related to a protected characteristic.

The lack of visibility and supervision can also give rise to unwanted behaviour. Without overstating the issue, it is noteworthy that access to pornographic websites has increased globally. This appears to be directly related to when each country imposed its version of lockdown and this has included the UK! Cases of employees accessing porn during work hours is unfortunately an issue which arises from time to time and where there is less supervision there is, of course, more of a risk of this. If this does happen there is more potential for it be misused and sometime sent to other employees who can feel threatened or harassed.

What sorts of things do employees do?

One of the issues is Cyber Bullying which can take place either during or outside working hours. If outside working hours there has to be a sufficient connection with work. ACAS has guidance on this and points out the risks for an employer not just in terms of poor performance and lost productivity but the effect this can have on overall employee morale.

There have been public posts by an employee on social media asking "who in the office has [a female colleague] not slept with. An employee has exchanged "saucy emails" (using a personal email address) with the employee of a client of the employer (resulting in the employer losing the business of the client). An employee has sent anonymous malicious emails to a colleague who he had been in a relationship with as well as emails to her new partner, leading to a criminal investigation. An employee has posted on Facebook that his area manager (who he had not met) was apparently a c**t.

Can the way we manage be an issue?

In short, yes it can. Micro-management can be a form of bullying depending on how it is done (and case law in the UK has confirmed this). A particular issue to look out for is the passive-aggressive post (on internal intranet or even worse external sites such as LinkedIn or Twitter) designed to embarrass employees so that they work in a different way. Also thought should be given to circulation lists, and team lists, as to who is invited to attend online meetings and why are certain people not being invited (especially if they are part of a team). It is also important to make sure that people are updated on the content of meetings if they were unable to attend. Failure to do this can give cause for at the very least resentment and ultimately discrimination claims (of people being singled-out, isolated or forgotten). More of an effort should be made to monitor this particularly when people are working from home.

What can we do to minimise the risk?

It is probably a good idea to re-iterate company policies in relation to internal and external communications, but more importantly more of an effort needs to be made by managers to stay in touch with those which work for them on a regular basis. Checking in with staff so that you have some awareness of the interactions which are taking place. Regular group and team catch ups on Webex, Microsoft Teams or Zoom can help with this. If you have monitored IT interactions for security reasons it is probably a good idea to remind employees of this and to remind employees about company policies on internet usage and access. See Lisa's article on how this may be incorporated into a working from home policy here.

So, are the risks of discrimination, bullying and harassment worse when employees work from home?

Probably not. They are, however, different and the biggest risk is forgetting that they may be an issue and then not addressing some of the underlying behaviours which may lead to problems in this area. It is not always home, sweet home!

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