

Blake Laphorn Tarlo Lyons' nursery and childcare news

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harassment in the workplace

Nursery operators are probably aware that it has been established law for some time that they can be vicariously liable for the acts of their employees and can therefore be liable, under discrimination laws, for harassment carried out by their staff against other staff. The harassment rules, of course, apply equally to males and females.

Recent changes under the Sex Discrimination Act 1975 (SDA), which amend and widen the definition of harassment, mean that an employee can bring a claim for harassment where the harassment is "unwanted conduct that is related to her sex or that of another person". It no longer has to be on the "grounds of her sex". This means that some actions that would not previously have fallen into the category of harassment may now do so. The guidance gives the example of a male employee following a female into the female toilets to shout at her. A tribunal had previously determined that such treatment was not "on the grounds of her sex". However, this scenario could be covered by the new definition as it is conduct "related to her sex". Operators therefore need to be aware that the potential for them to be liable for harassment has grown.

The changes in the SDA also mean that the employee no longer needs to be the person who is actually subjected to the unwanted conduct but could be a witness to gender-related harassment.

Significantly however, an employee can now bring a claim of harassment because she has been harassed by someone other than a fellow employee, such as a parent or a contractor carrying out work at the setting. The nursery operator may be liable for such harassment, if it has occurred on at least two occasions and the operator knew the harassment

had taken place. The two occasions may be unrelated incidents involving two, unrelated, parents.

As a result of these changes, operators should check their harassment policies and review how they will deal with harassment caused by third parties. The emphasis should be to encourage staff to report any alleged incidents of harassment, whether by another member of staff or a third party, to the operator. The policy must also contain a commitment by the operator to deal with any such complaints seriously. Operators may want to consider whether to display notices stating that harassment of its employees will not be tolerated and provisions to that effect in their contracts with parents.

points to note:

- check and update any harassment policies
- deal with any complaints of harassment promptly, fully and fairly
- put in place reasonable steps to prevent harassment in the workplace by colleagues and third parties



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