



University of Strathclyde
LAW CLINIC

9E Types of claim: (4) Harassment

A guide for the general public

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Introduction

When completing your ET1, you will be asked to identify which claims you are making. This is at Section 8.1 of the ET1.

You will be ticking the box that says discrimination and then the box below that identifies 'disability'. **This may be alongside other complaints.**

However it will also be necessary to be able to identify which type of disability discrimination you are claiming. The earlier you can do this the better so that you can be sure that the type of discrimination you are complaining of is included within the time limit.

You can do this at Section 8.2 of the ET1 where you are asked to set out the background and details of your claim. For more information about completing the claim form see slideshows 3A and 10D.

Types of disability discrimination

There are six possible claims for disability discrimination. These are:

- ▶ Direct Discrimination
- ▶ Indirect Discrimination
- ▶ Discrimination arising from disability
- ▶ Harassment
- ▶ Victimisation
- ▶ Failure to make reasonable adjustments

You can claim for any combination of these six claims. This series of slideshows aims to explain what these six possible claims are so that you can work out which ones might apply in your case.

What is harassment?

Under Section 26 of the Equality Act 2010, it is unlawful to harass someone in relation to their protected characteristic, in this case, their disability.

What does the law say?

(1) A person (A) harasses another (B) if—

(a) A engages in **unwanted conduct related to a relevant protected characteristic**, and

(b) the conduct has the **purpose or effect of—**

(i) **violating B's dignity**, or

(ii) **creating an intimidating, hostile, degrading, humiliating or offensive environment for B.**

...

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B; (you)

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

What is 'unwanted conduct'?

Unwanted conduct covers a wide range of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour.

The word 'unwanted' means essentially the same as 'unwelcome' or 'uninvited'.

'Unwanted' does not mean that express objection must be made to the conduct before it is deemed to be unwanted. A serious one-off incident can amount to harassment.

Where an objection is not initially made in respect of unwanted conduct that does not preclude a claim for harassment when an objection is then made.

Is the conduct 'related to' disability?

Unwanted conduct 'related to' a protected characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic. It just has to be **related to disability**. It includes the following situations:

- ▶ Where conduct is related to the employee's own protected characteristic;
- ▶ Where there is any connection with a protected characteristic (e.g. worker's friend or family member has a protected characteristic);
- ▶ Where the worker is wrongly perceived as having a particular protected characteristic;
- ▶ The unwanted conduct is related to the protected characteristic, but does not take place because of the protected characteristic.

Purpose or effect

If the **purpose** of subjecting the worker to the conduct is to create any of the circumstances defined in section 26(1)(b), this will be sufficient to establish unlawful harassment. It will not be necessary to inquire into the effect of that conduct on that worker.

Regardless of the intended purpose, unwanted conduct will also amount to harassment if it has the **effect** of creating any of the circumstances defined in section 26(1)(b).

Purpose or effect (2)

The following factors are relevant when determining whether the conduct had the required effect:

- ▶ The perception of the worker; that is, did they regard it as violating their dignity or creating an intimidating (etc) environment for them. This part of the test is a subjective question and depends on how the worker regards the treatment.
- ▶ The other circumstances of the case; circumstances that may be relevant and therefore need to be taken into account can include the personal circumstances of the worker experiencing the conduct; for example, the worker's health, including mental health; mental capacity; cultural norms; or previous experience of harassment; and also the environment in which the conduct takes place.
- ▶ Whether it is reasonable for the conduct to have that effect; this is an objective test. A Tribunal is unlikely to find unwanted conduct has the effect, for example, of offending a worker if the Tribunal considers the worker to be hypersensitive and that another person subjected to the same conduct would not have been offended.

Examples of harassment

If a worker with a hearing impairment is verbally abused because he wears a hearing aid, this could amount to harassment related to disability.

A worker has a son with a severe disfigurement. His work colleagues make offensive remarks to him about his son's disability. The worker could have a claim for harassment related to disability.

How to prove a claim of harassment

(1) Has harassment occurred?

Employee is subject to 'unwanted conduct'

AND

Conduct is 'related to' disability

(2) Conduct has the purpose and/or effect of

Violating the victim's dignity

AND/OR

Creating an environment which is intimidating, hostile, degrading, humiliating or offensive to the victim