

## Sexual Harassment in the Workplace

The Harvey Weinstein scandal broke in early October 2017 when the New York Times published a story detailing decades of allegations against Weinstein of sexual assault and harassment. What followed was a deluge of accusations against many other celebrities in Hollywood and the wider entertainment industry. By November, the scandal had embroiled Westminster with dozens of MPs implicated in allegations of sexual harassment and other inappropriate behaviour.

Social media rose to the call and the hashtag #MeToo became the rallying cry against sexual assault and harassment. The lid had been blown off endemic abuse of power and institutional sexism in many walks of life and it seems that a turning point has been reached in terms of sexual harassment in the workplace.

So, what constitutes sexual harassment?

It is useful first to understand what is meant by harassment in the workplace. ACAS describes harassment as 'any unwanted behaviour that makes someone feel intimidated, degraded, humiliated or offended.' Add any type of sexual nature to the behaviour and you are looking at sexual harassment.

There are some very obvious examples of behaviour that most people would agree would likely constitute sexual harassment like groping or exposing yourself to colleagues without invitation. But there are other behaviours that can constitute sexual harassment that are less obvious, such as telling lewd jokes, displaying raunchy posters, or making rude gestures.



Photo by Mihai Surdu on Unsplash

A common misconception is that if you personally think certain behaviour is acceptable, 'just a joke', or workplace banter, then it's not as serious. In fact, employment law is quite clear that it is how the behaviour is received that takes precedent, not how it was intended by the harasser.

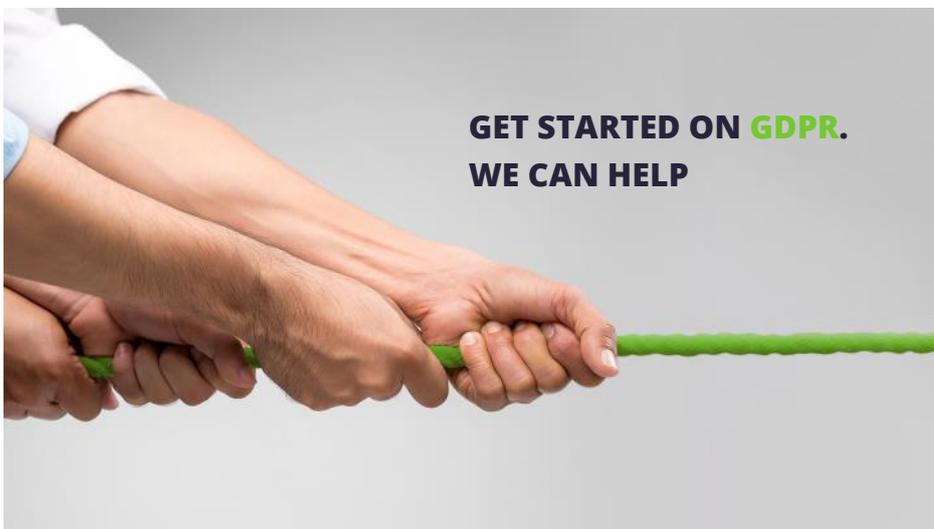
Most of us in society have a good understanding of what is acceptable and unacceptable in terms of behav-



our in public. But sexual harassment in the workplace seems to be more of a grey area, where standards of acceptable behaviour have changed over time. When questioned over the allegations which forced his resignation as Defence Secretary, Sir Michael Fallon recognised, "The culture has changed over the years. What might have been acceptable 10, 15 years ago is clearly not acceptable now."

Sexual harassment is no longer something that can be swept under the carpet. The scandal that started with accusations against Harvey Weinstein has resulted in a new awareness and unified front against sexual harassment in industries everywhere in the connected world. Make sure your business is up to date with bullying and harassment legislation and be aware of the risks.

**Call Beststart for more help.**



**GET STARTED ON GDPR.  
WE CAN HELP**

CONTENTS	
2	Legal news
3	What are the signs you need HR help?
4	A performance management process integrating Business Competencies
4	Beststart Referral Programme

## LEGAL NEWS

### GDPR – deadline for compliance less than 6 months away

The General Data Protection Regulation (GDPR) is European legislation which, despite Brexit, will still come into force in the UK, the latest date for compliance being **25 May 2018**. It will apply to all businesses which process personal data i.e. data relating to individuals. This means that it will apply to the use of employee data in HR, IT and the wider business, as well as suppliers or customers who may be individuals, sole traders or partnerships. The Information Commissioner's Office (ICO) will be the government body whose role it will be to both assist businesses to comply but to also monitor and enforce through the use of fines.

The GDPR provides a broader definition of 'personal data' than used in the Data Protection Act (DPA) to reflect the modern world of technology. There is also a special category of personal data called 'sensitive personal data', the definition for this is similar to the DPA but also includes biometric or genetic data.

The legislation sets out 8 rights for individuals: the right to be informed; right of access; right of rectification; right to erasure; right to restrict processing; right to data portability; right to object; and rights associated with automated decision making and profiling. Further, it promotes accountability and governance and makes the obligations of companies more explicit than previously in the

DPA. Companies will be expected to put in place appropriate but proportionate measures and some previous best practice principles will now become legal requirements. What should you do from a HR stance?

#### ◆ Visit the ICO website

Documents specifically aimed at SMEs and a new telephone advice service are on [www.ico.org.uk/for-organisations/business/](http://www.ico.org.uk/for-organisations/business/).

#### ◆ Conduct an employee data mapping exercise

#### ◆ Determine a lawful basis for processing personal data

Decide which of the 6 lawful bases you intend to rely on to process personal data. This must be documented and retained.

#### ◆ Appoint a Data Protection Officer if needed

#### ◆ Review your Data Protection Policy and Procedure

#### ◆ Review your Data Security Policy

#### ◆ Review how you obtain consent

This applies to candidates during the recruitment process; new and existing employees; and those leaving the organisation. Specific clauses can no longer safely be included in an employment contract.

#### ◆ Introduce privacy notices to all staff and all new joiners in the

#### future

#### ◆ Review the arrangements for transferring data to third parties

#### ◆ Review arrangements for transferring data internationally outside of the EU

#### ◆ Introduce training for all staff both on their responsibilities and rights

#### ◆ Introduce annual internal audits to ensure data maintained is accurate and processes are being followed

#### ◆ Consider signing up for a code of conduct or certification scheme

Not legally required but may be an appropriate decision for some organisations. Note, the nature of SMEs is taken into account when looking at compliance.

**Call Beststart for help reaching compliance by the 25 May 2018.**



Image courtesy of Stuart Miles at FreeDigitalPhotos.net

### Mr V Onyike v Sainsbury's Supermarkets Ltd

A tribunal has ruled that an employee working in a supermarket's delivery yard was unfairly dismissed for wearing headphones.

Onyike had worked for 13 years at Sainsbury's as a commercial assistant in the Wandsworth store's delivery yard. This was a known high-risk area with a safe working practice notice on the yard's noticeboard and a more detailed health and safety procedure in the employee handbook which specified that failure to follow these procedures amounted to gross misconduct. On two occasions in March 2017, Onyike was

caught working in the delivery yard whilst wearing headphones and was told to remove them. On the latter Onyike said the headphones were turned off. During an investigation into failure to follow health and safety procedures, Onyike admitted to wearing headphones but said there was no music playing and he was unaware he was wearing them. During 3 disciplinary hearings, Onyike accepted he had been told not to wear headphones, but maintained that he could hear and that he didn't believe this would endanger him. He apologised and vowed not to do

it again. Onyike was dismissed but brought claims of unfair and wrongful dismissal against Sainsbury's.

Finding Onyike's dismissal unfair and wrongful, the Judge said that Sainsbury's had focused on its assumption that he would repeat his actions and failed to outline that wearing headphones in the delivery yard was a health and safety rule or inform staff of the disciplinary consequences of wearing them. This is a reminder to all businesses to ensure procedures are up to date and specific to their environment.

## 10 reasons organisations with 50 or more employees need HR Consultancy

Whilst employment law has changed markedly from 10 years ago when Beststart launched, the need for organisations with 50 or more employees to introduce a retained HR Consultancy has remained constant.

To help explain why, we outline the changes a company goes through during its growth phase. At each stage of development there is a fundamental shift in the way the organisation has to manage its people in order to prosper and grow. This is not to say that an organisation has to have HR but failure to give due consideration to the Human Resource Management function can lead to devastating consequences.

The more rapid the growth, the more challenging it becomes to control the operational performance of your organisation. With the right HR Consultancy in place, an organisation can reduce risk and improve its bottom line performance – both essential ingredients to deliver stakeholder and customer value.

**The Early Stages of Start-up:** Typically, an organisation can get away without the need for retained HR. Often the business will be formed from an idea and staffed by family and/or friends who trust one another implicitly. For the main part, they can work in harmony to achieve their ambitions.

**5 to 10 employees:** However, as time passes and the business increases in size, the organisation has to look further afield to recruit the skills it needs. This is challenging enough but as employees are drawn from beyond the 'original circle', issues of trust, responsibility and control can increase. Therefore, the need for a solid foundation and HR processes, including contracts of employment and a company handbook, become important.

**10+ to 25 employees:** Employee challenges become greater as the organisation's structure starts to take shape. The need to clarify roles and responsibilities come into sharper focus as a team's and an individu-

al's performance begins to be critically evaluated. Typically, the Financial Director (FD) finds the HR function falling under their remit and they normally seek external support to ensure the right processes are followed and outcomes achieved. While a telephone helpline and manual are often seen as a quick fix, the implications for an organisation, especially those that are evolving, can be costly as we explain below.

**25+ to 50 employees:** When an organisation reaches 25+ employees questions start to arise around the recruitment and retention of staff, employee career frameworks, and pay and reward. This cannot be directly dealt with through a phone call and indexed file. As teams become larger and more complex, mechanisms for feedback and control need to be put in place to ensure efficient information flow. Employee expectations are greater, and it's not unusual for the Board to start questioning staff as well as their own capability. This combined with the daily increase in HR issues and the ability for the FD and Managers to effectively deal with them, in both a timely and fair manner, means that some form of retained external HR support should be considered.

**Organisations with 50 or more employees:** You may already have employed a HR Consultancy? Deeper questions are asked around the values and culture of the organisation. Can existing suppliers support you as well as they used to? Do they lack the skill or expertise? More emphasis than ever is placed on the strategic direction of the organisation. Matters of succession planning, recruitment and talent management and retention, as well as the need for feedback mechanisms in the form of staff engagement and welfare surveys become increasingly critical to your future success. Being able to motivate and maintain morale requires skill and careful planning, enabling Managers to get the best out of their teams as well as their own performance.

### Signs you should start thinking about using retained HR Consultancy:

1. Spending more time dealing with people issues than growing your business.
2. Feeling isolated and alone. Your Managers are spending more time in meetings than directing and doing their job.
3. Staff feel they are not listened to and you notice a drop in morale.
4. An increase in sickness absence, whether management's or staff's, and stress levels are increasingly a concern as people appear to be unable to deal with their daily work. Productivity levels are falling and for no obvious reason.
5. Customer satisfaction is being affected despite your best efforts to put operational systems and practices in place.
6. Talented staff leave, possibly taking up new roles in your competitors. Offering additional pay/bonus no longer works and falls outside your agreed pay scale limits.
7. Struggling to attract the right talent and leadership to the organisation because your recruitment process keeps failing to identify the right people.
8. Spending more time worrying at night and the weekends about how you are going to hold the business together than thinking about those sectors and services you wish to grow.
9. The person/people in charge of HR no longer have the technical capability or breadth of skillset to deal with more complex HR issues. They are struggling to manage the function despite their best effort.
10. Being forced to jump through hoops and it takes too long to resolve the simplest of staff issues. Your legal costs are escalating for advice on more complex HR matters.

## Case Study – Performance Management Framework

Our client is a multi-channel waste management company running national logistics operations in recycling, removal, disposal and hazardous waste. With a head office of 75 staff, their approach to performance management, career progression and organisational structure was largely organic and not consistent across all the group. The company's Directors decided to review staff development and progression in the context of a business wide initiative. Beststart HR was engaged to design and build a bespoke performance management process.

The starting point was a review of all Job Descriptions (JDs) in the business. Our HR Consultant met with the Directors and Heads of each department to review the JDs for their respective departments. A new format JD was designed to include sections for Business Competencies and Technical Skills, as well as the standard Key Accountabilities and Person Specification. Once all the JDs had been updated and converted to the new format, we worked with the department heads to produce a suite of Technical Skills for each department, focusing on the specific skill sets required to be successful in each role. A set of 5 core business competencies was then designed to

reflect the company's vision and core values. For each core business competency (Accountability, Collaboration, Customer Focus, Integrity, and People Management) a competency framework with a full suite of behavioural indicators to allow Managers to identify levels of attainment was designed and built.



Image courtesy of idea go at FreeDigitalPhotos.net

Our Consultant then worked with the management team to establish an organisational structure and hierarchy allocating job levels to all roles in the business. This allowed the business to assign competency levels to each role based on their job level leading to a consistent expectation for management in terms of the core business competencies throughout the organisation.

We then designed an annual performance management cycle and produced all of the forms and supporting material, including a Perform-

ance Review and Development Pack, to allow Managers to measure the performance and development of their staff against their JD, technical skills, core business competencies and personal objectives.

Once all of the material and documentation was ready for implementation, our Consultant designed and facilitated workshops for Line Manager training on the new performance management cycle and process, as well as guidance on giving feedback, setting SMART objectives and training needs analysis. Calibration meetings were held after implementation to ensure consistency in Line Managers' approach and ongoing support provided to ensure a smooth roll out of the new process.

The new system has provided: a means for all staff to see clearly and objectively what good performance looks like in their role; identify any areas they need to improve in to allow development and progression in their careers; provided Managers with a clear framework for measuring performance of their staff and driving excellence through objective performance management; allowed the business to identify high performers for succession planning; and to reward appropriately with a performance related bonus scheme.

## DON'T KEEP US A SECRET

Beststart's aim is to always provide you with the best possible advice and support you can depend on to ensure you achieve your right outcome.

Since 2007, we have helped hundreds of organisations with their HR. We are proud that despite not tying clients into onerous and long contracts, once an organisation becomes a Beststart client, it chooses to remain a Beststart client. We hope this reflects not only the quality of our work but the trust and confidence we engender by dealing with the most challenging and sensitive issues within our clients' organisations.

Our business has been built on word of mouth, and in a digital age where many claim to be an expert, personal recommendation and referral carries even greater weight. If you know someone at a client, supplier or acquaintance who increasingly seems to be mentioning their staff for whatever reason – change, absenteeism, disagreements, performance issues, retention, etc.– please let them know we would be happy to have a friendly chat and explore where even small changes might help iron out their people challenges.

## CONTACT US

### Registered Address:

1st Floor, Building 16  
Gateway 1000, Arlington Business Park  
Whittle Way, Stevenage  
Hertfordshire SG1 2FP

### Our Second Office Address ('Streets HR'):

Enterprise House, 38 Tyndall Court  
Commerce Road, Lynch Wood  
Peterborough, Cambridgeshire PE2 6LR

T +44 (0)1438 747 747  
enquiries@beststarthr.com  
www.beststarthr.com

