



Axminster Town Council



AXMINSTER TOWN COUNCIL DIGNITY AT WORK POLICY (ANTI-HARASSMENT AND BULLYING)

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This is an example of an employment policy designed for a small council adhering to statutory minimum requirements and does not constitute legal advice. As with all our policies it is consistent with our terms and conditions of employment

1. Introduction

1.1 All employees should be able to work in an environment free from harassment and bullying and be treated with dignity and respect regardless of gender, sexual orientation, transgender status, marital or family status, colour, race, nationality, ethnic or national origins, creed, culture, religion or belief, age, or disability.

1.2 This policy and procedure provide guidance on what to do if an employee is concerned about bullying or harassment and what to expect if they raise concerns. It applies to all employees (whether permanent, fixed term, or casual), contractors and agency staff.

2. Policy

2.1 The Council does not tolerate bullying or harassment in the workplace. This is the case for work-related events that take place within or outside of normal working hours; on Council property or elsewhere; whether the conduct is a one-off act or repeated course of conduct, and whether done purposefully or not.

2.2 The Council does not tolerate retaliation against, or victimisation of, any person involved in bringing a complaint of harassment or bullying. Retaliation or victimisation will also constitute a disciplinary offence, which may in appropriate circumstances lead to dismissal or other sanctions. Employees should also be aware that if a court or tribunal finds that they have bullied or harassed someone, in some circumstances the treatment may amount to a crime punishable by a fine or imprisonment.

2.3 The Council will take appropriate action if any of our employees are bullied or harassed by fellow employees, Councillors, members of the public or contractors.

3. What type of treatment amounts to bullying or harassment?

3.1 Bullying is offensive, intimidating, threatening, malicious or insulting behaviour, and/or an abuse or misuse of power that undermines, humiliates or injures the person on the receiving end.

3.2 Harassment is unwanted conduct related to relevant 'protected characteristics', which are sex, gender reassignment, race (which includes colour, nationality and ethnic or national origins), disability, sexual orientation, religion or belief and age. Harassment amounts to unlawful discrimination if it relates to a 'protected characteristic'.

3.3 Examples of bullying and harassment include but not exclusively:

- Verbal abuse or offensive comments, jokes or pranks related to age, disability, gender re-assignment, marriage, civil partnership, pregnancy, maternity, race, religion, belief, sex or sexual orientation
- Lewd or suggestive comments

- Deliberate exclusion from conversations or work activities
- Withholding information a person needs in order to do their job
- Practical jokes, initiation ceremonies or inappropriate birthday rituals
- Physical abuse such as hitting, pushing or jostling
- Rifling through, hiding or damaging personal property
- Subjecting a person to humiliation or ridicule, belittling their efforts, often in front of others
- Abusing a position of power

3.4 It is important to recognise that conduct which one person may find acceptable another may find totally unacceptable. All employees must, therefore, treat their colleagues with respect and appropriate sensitivity.

3.5 Bullying does not include appropriate criticism of an employee's behaviour or proper performance management.

4. Reporting concerns

4.1 What an employee should do if they witness an incident they believe to be harassment or bullying

If an employee witnesses such behaviour they should report the incident in confidence to the Clerk or a Councillor. Such reports will be taken seriously and will be treated in strict confidence as far as it is possible to do so.

4.2 What an employee do if they feel they are being bullied or harassed by a member of the public or contractor (as opposed to a colleague)

If an employee feels that they are being bullied or harassed by someone with whom they come into contact at work, this should be raised with the Clerk or a Councillor in the first instance. They will then decide how best to deal with the situation, in consultation with the employee.

4.3 What an employee should do if they feel they are being bullied or harassed by a Councillor

If an employee feels that they are being bullied or harassed by a Councillor, they should raise this with the Clerk or the Mayor of the Council in the first instance. They will then decide how best to deal with the situation, in consultation with the employee. There are two possible avenues for employees, informal or formal. The Informal Resolution is described below. Formal concerns regarding potential Code of Conduct breaches will be investigated by the Monitoring Officer at East Devon District Council.

4.4 What an employee should do if they feel that they are being bullied or harassed by another employee

If an employee feels that they are being bullied or harassed by a colleague, there are two possible avenues for them, informal or formal. These are described below.

5. Informal resolution

5.1 If an employee feels that they are being bullied or harassed they may be able to resolve the situation themselves by explaining clearly to the perpetrator(s) that their behaviour is unacceptable, contrary to Council policy and must stop. Alternatively, they may wish to ask the Clerk, a colleague or a Councillor to put this on their behalf or to be with them when confronting the perpetrator(s).

5.2 If the above approach does not work or if employees do not want to try to resolve the situation in this way, or if they feel you are being bullied by their own manager, they should raise the issue with the Chair of the Employment Committee. The Chair of the Employment Committee (or another appropriate individual) will discuss with them the option of trying to resolve the situation informally by telling the alleged perpetrator(s), without prejudging the matter:

- that there has been a complaint that their behaviour is having an adverse effect on a member of staff
- that such behaviour is contrary to our policy
- that for employees, the continuation of such behaviour could amount to a serious disciplinary offence.

5.3 It may be possible for the Chair to have the conversation with the alleged perpetrator without revealing the employee's name, if this is what they want. The Chair will also stress that the conversation is confidential.

5.4 In certain circumstances the Council may be able to involve a neutral third party to facilitate a resolution of the problem. The Clerk or the Chair of the Employment Committee will discuss this with the employee if it is appropriate.

5.5. If an employee's complaint is resolved informally, the alleged perpetrator(s) will not usually be subject to disciplinary sanctions. However, in exceptional circumstances (such as a serious allegation of harassment or in cases where a problem has happened before) the Council may decide to investigate further and take more formal action notwithstanding that the employee raised the matter informally. The Council will consult with you before taking this step.

6. Raising a formal complaint

6.1 If informal resolution is unsuccessful or inappropriate, an employee can make a formal complaint about the harassment or bullying to the Clerk or the Chair of the Employment Committee. A formal complaint may ultimately lead to disciplinary action against the perpetrator(s) where they are employed.

6.2 The Clerk or the Chair of the Employment Committee will appoint someone to investigate an employee's complaint. They will need to co-operate with the investigation and provide the following details (if not already provided):

- the name of the alleged perpetrator(s),
- the nature of the harassment or bullying,
- the dates and times the harassment or bullying occurred
- the names of any witnesses and
- any action taken by the employee to resolve the matter informally

6.3 ... against a colleague or contractor

The alleged perpetrator(s) would need to be told the employee's name and the details of their complaint for the issue to be investigated properly. However, the Council will carry out the investigation as confidentially and sensitively as possible. Where the employee and the alleged perpetrator(s) work in proximity to each other, the Council will consider whether it is appropriate to separate whilst the matter is being investigated.

6.4 ... against a member of the public

The Council will investigate the complaint as far as possible by contacting the member of public or the contractor's employer and asking for a response to the allegations – in line with the Enquiries and Complaints Policy.

6.5 ... against a Councillor

Formal concerns regarding potential breaches of the Councillor Code of Conduct will be referred to the Mayor or to the Monitoring Officer of East Devon District Council.

7. During the investigation

7.1 Investigations will be carried out promptly, sensitively and, as far as possible, confidentially. If, after an investigation, it is decided that an employee has harassed or bullied another employee, then the employee may be subject to disciplinary action, up to and including dismissal.

7.2 The Council will consider how to protect an employee's health and wellbeing whilst the investigation is taking place and discuss this with them. Depending on the nature of the allegations, the Investigator may want to meet with the employee to better understand their

complaint. Whilst there is no Statutory Right to be accompanied at investigation meetings, the Investigator will consider an employee's request if they want to have a work colleague or union representative with them at that meeting.

8. Hearing

8.1 After the investigation, a panel will meet with an employee in a Grievance Hearing (following the Grievance Procedure) to consider the complaint and the findings of the investigation. At the meeting an employee may be accompanied by a fellow worker or a trade union official.

8.2 After the meeting the panel will write to the employee to inform them of the decision and to notify them of their right to appeal if they are dissatisfied with the outcome. Employees should put their appeal in writing explaining the reasons why they are dissatisfied with the decision. Their appeal will be heard under the appeal process that is described in the Grievance Procedure.

9. Victimisation

Employees and others who make allegations of bullying or harassment in good faith will not be treated less favourably as a result.

10. False allegations

False accusations of harassment or bullying can have a serious effect on innocent individuals. Employees and others have a responsibility not to make false allegations. False allegations made in bad faith will be dealt with under our disciplinary procedure.

11. Disclosure and confidentiality

The Council will treat personal data collected during this process in accordance with the Data Protection policy. Information about how data is used and the basis for processing data is provided in the employee privacy notice.

12. Use of the disciplinary procedure

Harassment and bullying constitute serious misconduct. If, at any stage from the point at which a complaint is raised, we believe there is a case to answer and a disciplinary offence might have been committed, we will instigate our Disciplinary Policy and Procedure. Any employee found to have harassed or bullied a colleague will be liable to disciplinary action up to and including summary dismissal.

This is a non-contractual procedure which will be reviewed from time to time.

Date of policy: 24th November 2020

Approving committee: Employment

Date of committee meeting:

Policy effective from: December 1st 2020

Date for next review: December 2021

Notes

1. Protected characteristics

A 'protected characteristic' is defined in the Equality Act 2010 as age, disability, sex, gender reassignment, pregnancy and maternity, race, sexual orientation, religion or belief, and marriage and civil partnership. It is unlawful to discriminate against an individual because of any of the protected characteristics.

Discrimination includes treating people differently because of a protected characteristic. Harassment is unwanted conduct related to a 'protected characteristic'. Employees can complain of harassment even if the behaviour in question is not directed at them. This is because the complainant does not actually need to possess the relevant protected characteristic. An employee can complain of unlawful harassment if they are related to someone with a protected characteristic, or because a colleague believes they have a protected characteristic.

2. Legal risks

An employee does not need to be employed to make a discrimination claim at a tribunal.

- Job applicants who believe they have not been appointed because of a 'protected characteristic' can make a claim.
- New or established employees who are dismissed because of a health condition can make a discrimination claim at a tribunal.
- An employee in their probationary period may claim discrimination if their employment has been ended for no credible reason.
- An employee subjected to harassment can make a discrimination claim at a tribunal.
- An employee asked to retire can make a discrimination claim at a tribunal.

Successful unfair dismissal claims are limited to a compensation cap, whereas those for unlawful discrimination have no cap.

A positive employment culture, and swift action if conduct falls beneath acceptable standards will help mitigate the risks. An unhealthy culture will make it difficult to defend claims.

The time to defend and the cost of defending tribunal claims can be significant, irrespective of the outcome.

3. Culture and behaviour

Modern day workforces are eclectic, and a positive culture throughout the Council enables staff with different backgrounds and beliefs to share ideas and shape how the Council achieves what Councillors decide for the community.

Different people find different things acceptable. It may not be obvious that some behaviour would be unwelcome or could offend a person. Those in positions of 'power' over an employee may not always understand how words or actions are received. An employee may not always find it easy to communicate how they really feel. 'Banter' that on the face of it is reciprocated may nonetheless be unwelcomed and damaging. Others who overhear comments, or learn of them third hand, will form judgements about the culture.

Whilst both staff and Councillors jointly determine what the working culture is like, Councillors are key in demonstrating what is and isn't acceptable behaviour. This is apparent from how Councillors behave with each other in Council meetings and also in how standards of behaviour are applied through the use of informal discussion and formal policies.

Examples of unacceptable behaviour at work include (but are not limited to):

- physical conduct ranging from touching to sexual advances and serious assault
- the offer of rewards for going along with sexual advances, e.g. promotion, access to training
- suggestions that refusing sexual advances will adversely affect aspects relating to employment (such as pay, promotion, training, work opportunities, or any other condition of employment or development)
- comments about a person's appearance
- jokes or comments of a sexual or racial nature or about an individual's age, disability, sexual orientation or religion
- questions about a person's sex life
- unwanted nicknames, especially related to a person's age, race or disability
- the use of obscene gestures
- excluding an individual for a non-work reason
- treating an employee differently because they have, or are perceived to have, a 'protected characteristic' or are associated with someone who does
- the open display of pictures or objects with sexual or racial overtones, even if not directed at any particular person
- spreading malicious rumours or insulting someone
- picking on someone or setting them up to fail
- making threats or comments about someone's job security without good reason;
- ridiculing someone

- isolation or non-cooperation at work; and
- excluding someone from social activities.

4. During the investigation

Employers have duty of care to provide a safe place of work. If a complaint is made, discuss how to manage working relationships whilst the allegation is being investigated and until the outcome is disclosed. This is as much for the protection of the alleged perpetrator as for the aggrieved.

Consider whether a neutral person should be offered as a 'listening ear' for both parties in the investigation. Offer other support that may be appropriate to the situation such as signposting to support groups, time off for counselling etc. If you have suspended a staff member, your duty of care continues and it's important to consider their wellbeing and mental health.

Ensure that you regularly communicate with both parties.

5. Victimisation

All employees have the right to raise genuine concerns without the fear of reprisals. If the aggrieved (or a witness) is treated differently / less favourably because they have raised a complaint, then this is victimisation. This would include isolating someone because they have made a complaint, cancelled a planned training event, or giving them a heavier or more difficult workload. Victimisation can lead to a claim to an employment tribunal.

6. False allegations

If an employee makes an allegation that they know to be untrue, or gives evidence that they know to be untrue, the council should consider the matter under the disciplinary procedure. Such an allegation would be potentially Gross Misconduct.

7. Complaints against Councillors

Following the Ledbury case, the law is clear that any formal complaint regarding a breach of the Code of Conduct must be referred to the Mayor for investigation. During the investigation, it is critical to ensure that where an employee of the Council has made the complaint, that the Council agrees with the employee reasonable measures to protect their health and safety. Such measures may include a temporary change in duties, change of work location, not attending meetings with the person to whom the complaint has been made etc.