

Harvey Weinstein and you – what employers should be doing about sexual harassment

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What started with complaints against an Oscar-winning movie producer has led to a movement that has toppled government ministers, reduced much-loved figures from the entertainment world to pariahs, and has forced the reshooting of a film to remove a star now under criminal investigation.

This evolving sexual harassment narrative in the national and international media should be making business leaders and HR professionals everywhere stop and pause to consider if their procedures and policies in respect of sexual harassment are effective, and, equally importantly, if they are properly communicated across their organisations.

Guernsey may feel a million miles away from Hollywood or Westminster but the issue of sex harassment is just as live here. A survey in 2015 showed that almost 50% of professional women felt they had experienced some form of harassment in the Guernsey workplace.

So where do we go from here? What should you do to protect your people and your firm from harassment?

The most important thing an employer can do to protect both the company and the employee is to take complaints seriously, whether they are made formally or informally. Complaints should be investigated robustly by way of a fair, proper and appropriate investigation that neither undermines the complainant nor scapegoats the subject of the complaint.

"Sexual harassment" is a concept defined in employment legislation, it is not a criminal offence, and it is important that the distinction is recognised. Employers and HR teams should be prepared for when a complaint crosses the line between a matter that can be resolved internally and one that should be referred to the police. And where a complaint falls into the realms of criminal conduct, employees who opt for the matter to be dealt with by the police, should be supported.

Under Guernsey law, an employee can make a claim against both the individual who they say has harassed them **and** their employer, whether or not the employer was aware of the alleged harassment. Furthermore, the usual qualifying period of one years' service before an employee can bring a claim does not apply in cases of sex harassment.

Successful claimants can expect to receive damages in the region of three months' salary for sex discrimination or nine months' salary if they have resigned as a result of the discrimination, and there may be additional contractual sums due. However, as can be seen internationally, the PR damage that can result from losing a sex discrimination claim in the Employment Tribunal, especially in a small jurisdiction like Guernsey, goes beyond financial loss and affects not just your brand in commercial terms but also your reputation as an employer.

The Weinstein and Westminster sexual harassment stories should be prompting all employers to review their policies and procedures, bring them up to date and where necessary take advice both to deal with existing issues and to prevent claims arising in the first place.

Rachel DeSanges, Head of Employment in Guernsey advises on contentious and non-contentious elements of employment legislation for Ogier in both Guernsey and Jersey. She has 15 years' experience as an offshore lawyer. Rachel is ranked in both Legal 500 and Chambers, and is former President of the Guernsey International Legal Association and Vice-President of the Guernsey Chamber of Commerce.

The Ogier Employment Team will be leading a lunchtime seminar on Equality and Sex Discrimination in the Workplace at the Old Government House Hotel in Guernsey on 1 February. The seminar will address issues arising from the Westminster/Weinstein and other high profile cases of work place sex harassment in more detail.

This editorial first appeared in Contact magazine.

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