

Preventing and Handling Inappropriate Behaviour in the Workplace



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Introduction

A well-functioning working community may have different understandings about work and how to do it. Problems are, however, tackled promptly. Repeated and prolonged conflict situations have a negative impact on the atmosphere and productivity and cause psycho-social loading. Therefore, they need to be handled thoroughly and necessary actions need to be taken. Just management and transparency in decision-making lay the foundation for preventing inappropriate behaviour. A well-functioning working community is prepared to handle conflict situations promptly. Behaviour in the workplace must be mature and professional.

Preventing harassment and other inappropriate behaviour and discrimination concerns the whole working community, the employer and the employees alike.

According to the Occupational Safety and Health Act (28§) the employer must take action to remove harassment or other inappropriate behaviour that hinders or endangers health and safety. An employee is required to avoid harassment and other inappropriate behaviour that endangers the health of a colleague. (Occupational Safety and Health Act 18§ sub-section 3).

This publication is meant to support workplaces in preventing and handling harassment, inappropriate behaviour and discrimination and in drafting procedures and guidelines relating to these situations. The publication includes the definitions of the key concepts, a summary of the principles and guidelines for proper behaviour in the workplace as well as a suggested procedure for situations of inappropriate behaviour. There is also a summary of the situations and behaviour that can be considered inappropriate and those that do not constitute inappropriate behaviour. The publication covers the employer's actions to prevent and remove inappropriate behaviour and introduces the role of the Occupational Health and Safety Authority in monitoring the handling of the situations of inappropriate behaviour.

The publication Preventing and Handling Inappropriate Behaviour in the Workplace is meant for the management, supervisors, HR, Occupational Health and Safety organisation, shop stewards, and employees as well as for Occupational Health Care and educational institutions.

This manual takes into account the amendments made on the Non-Discrimination Act and the Act on Equality between Women and Men on 1 January 2015.

A well-functioning working community

The employer has the right to organise the work, the internal operations and other work-related arrangements in the way it sees fit. The employer's representatives make sure the operations run smoothly. Disturbances or problems might appear in the functioning of the working community and the responsibility for having these situations sorted out and handled rests with the employer's representatives, that is, the supervisors. The employer must make sure the supervisors have the necessary skills to handle these situations.

The problems or disturbances in the working community can be caused by many different things; the amount of work, problems with quality or timetables, breaks in the flow of information and co-operation, wastage, overtime or gaps in staff and competence resources. Also, cultural conflicts or different senses of humour can lead to conflicts and hurt feelings in working communities. These problems should be han-

dled as work-related issues, not as problems relating to personalities.

Employees may have different ways of working or different ideas about work. It is important for the supervisor to act promptly in situations of disagreement to prevent the situation from escalating and causing disruptions to work or problems to the employees.

A well-functioning working community can prepare for solving conflicts. The following tools might be used:

- rules for appropriate behaviour and good conduct at work
- principles of handling conflicts and giving feedback
- procedures for handling harassment, inappropriate behaviour, bullying and discrimination
- workplace mediation.



Rights and responsibilities at work

Employer

The authority of the employer is regulated by laws, norms and good conduct. The employer has the right to organise, allocate, manage and monitor work and work tasks. The employer decides on the quality and scope of work tasks as well as the working methods and procedures at work. It is the employer's duty to make sure the supervisors, as the employer's representatives, have the necessary means and capabilities to handle conflict situations. The employer must intervene in conflicts as early as possible.

- The employer has the right to direct and allocate work and thereby manage and monitor the work of the employees.
- The employer must treat employees equally unless there is an acceptable cause for derogation deriving from the position or the task of the employee.
- The employer must ensure the employees' health and safety at work.
- The employer has to provide employees proper orientation to the work itself and the conditions at the workplace.
- The employer must monitor the safety of the working methods and the state of the working community.
- After becoming aware of inappropriate treatment or harassment, the employer must immediately take action to handle and remove harassment or inappropriate behaviour.
- The employer must not exercise harassment or inappropriate behaviour towards an employee.
- The employer has the right to give work-related, concrete feedback to the employee.

Employee

- The employee must perform the work tasks with care under the supervision and management of the employer.
- The employee has the duty to perform the tasks observing the given instructions and act reasonably for his/her position.
- The employee must follow the instruction, advice and orders given by the employer within its legitimate management authority.
- The employee must avoid harassment and other inappropriate treatment of other employees in the workplace.
- The employee has the right to equal treatment.
- When an employee feels s/he is being harassed or inappropriately treated, s/he has the right to have the issue handled promptly.

Key concepts

The Occupational Safety and Health Act prohibits harassment and inappropriate treatment that causes health hazards or risks. The law does not, however, define these concepts. All negative behaviour in the workplace does not mean such harassment and inappropriate treatment causing health hazards or risks as mentioned in the law.

Inappropriate is such negative behaviour in the workplace that is not in line with good conduct and proper manners. It may mean a one-off venting of emotions / eruption or continuous, systematic and intentional actions.

Bullying and emotional abuse means such situations, where a person is repeatedly and for a long time subjected to oppressive, insulting or subordinating treatment. It is a chain of events which leads the victim to feel defenceless. The actor can be a colleague, a supervisor, a subordinate, or an outsider, such as a customer. Any member of a working community may be subjected to bullying or emotional abuse.

Harassment, according to the Occupational Safety and Health Act (28§), means such inappropriate treatment that causes hazards or risks to an employee's health.

Also sexual and gender harassment is prohibited under section 28 of the act. It is the employer's obligation to take measures against harassment once becoming aware of it. If the employer doesn't take the necessary measures and an employee's health is endangered, they employer may be prosecuted for neglecting occupational safety or even for an offence against the Occupational Safety and Health Act. If it is a question of sexual or gender harassment, it may also be considered discrimination under the Equality Act. Mild, random cases where someone behaves inappropriately, cannot be considered harassment.

Discrimination refers to a situation where the employer without a just cause or acceptable reason treats an employee or applicant less favourably because of their personal characteristics, background or private life. Only an employer or an employer's representative can be found guilty of discrimination. An act of discrimination may occur in job advertising, selection, work tasks or working conditions. Discrimination will be further discussed on page 12 of this manual.

Characteristics of inappropriate treatment

Inappropriate treatment means such behaviour and forms of communication that make the other party feel distressed, humiliated or defenceless.

Inappropriate treatment relating to work and working may include:

- inappropriate abuse of the employer's management authority
- giving degrading orders
- changing the agreed working terms and conditions on illegal grounds
- excluding a person from the working community or withholding information
- repeated, unjustified intervention in a person's work and performance
- repeatedly undermining a person's work
- changing the quality or quantity requirements unjustifiably.

Inappropriate treatment relating to interaction may include:

- threats, physical violence
- defamation
- sexual harassment
- slander of a person's position, reputation, personal qualities, characteristics, appearance, or private life, spreading false information or gossip, public humiliation
- unjustified questioning of a person's health, work ability or mental health.

The following do not count as inappropriate treatment:

- decisions made based on the employer's legitimate management authority, even if they may be experienced inappropriate
- justified, even critical feedback on work performance
- justified disciplinary actions (eg. giving a warning)
- work ability assessment of an employee initiated by the employer after the problems to perform the tasks have been discussed with the employee
- conflicts arising from differing opinions and interpretations about work, even if they were seen as insulting
- dealing with work-related problems or tasks within the working community.

Good behaviour in the workplace

Few workplaces can totally avoid conflicts in the working community. Guidelines on good conduct at work are meant to guide the people to interact and behave appropriately and responsibly at work. It is a good idea for a workplace to have clear guidelines for conflict situations and proper behaviour, as well as instructions on what to do in case of inappropriate behaviour. The guidelines describe the desired course of action and they can be prepared together with the staff. The guidelines apply to all members of the working community and are an important part of orientation. Not following the guidelines constitutes breaking a rule or neglecting a work-related obligation.

When drafting the instructions for good conduct, you can follow these principles:

Behaviour at work

- Work is performed under the supervision of the employer.
- Everyone needs to be able to work properly and discuss issues relating to work with all members of the community – regardless of their own state of emotions, the personality of the other party, or their values or opinions.
- Inappropriate behaviour must not be tolerated in any form.
- Corrective or critical feedback must be given privately and face-to-face.
- Mutual trust and respect are the foundation of good co-operation.
- It is important to use good manners at work as well.
- Everyone must respect their colleagues' privacy. Employees' private matters may not be discussed in the workplace unless the employee brings them up him-/herself.

Procedure for situations of inappropriate treatment

If you feel that you have been inappropriately treated, do the following:

- First, discuss the matter with the person treating you inappropriately and tell them that this is not acceptable. Make sure they know what it is about their behaviour that you feel is inappropriate.
- If you feel that you cannot bring the issue up alone
 - ask the shop steward, OHS representative or a colleague to accompany you
 - you can contact the Occupational Health care and discuss the matter with them.
- If the inappropriate treatment continues, notify your supervisor.
- If the person treating you inappropriately is your supervisor, notify a higher supervisor about the situation. In such a case, the higher supervisor will give you further instructions and make sure that the inappropriate treatment stops.
- If the employer's representative does not take the necessary measures to solve the situation, contact
 - the Occupational Safety and Health Authority
 - your labour union.
- It may be advisable to keep a record of the incidents (time, content, what was done by yourself and the other party) for possible further handling of the situation.

If you are suspected of inappropriate treatment

- listen carefully to what the other party has to say and take it seriously, even if you might feel strongly or defensive about it
- ask the other party to be specific about what in your behaviour has been inappropriate
- bring up your own perspective
- be prepared to apologise
- stop the inappropriate behaviour.

If you notice inappropriate behaviour in your workplace

- intervene and if necessary, notify your supervisor.

Employer's obligation to act

If there is inappropriate treatment at work that causes a hazard or risk to an employee's health, the employer is obligated by the Occupational Safety and Health Act to take the necessary measures to stop this behaviour once aware of it. This obligation arises when the employer notices inappropriate treatment or is made aware of it. The obligation to act on it always rests with the employer, regardless of whether the inappropriate treatment occurs between employees or between an employee and a supervisor. According to the Equality Act, the employer must also act when an employee has been subjected to sexual or gender harassment. Also in such cases, the obligation to act arises once the employer is aware of the case.

The employer can become aware of the inappropriate treatment

- through his/her own actions or observations
- through a report by the victim of the inappropriate treatment
- through a report by the shop steward, OHS representative, other OHS person, or other member of the working community
- through a report by Occupational Health care with the consent of the victim
- through development discussions or exit interviews
- through workplace climate surveys.

If the employer does not take action and allows the inappropriate behaviour to continue, a representative of the employer may be held legally responsible and punishable for a violation of occupational safety and health.

Finding out what has happened and taking action

The employer must first find out all the details about the case of inappropriate treatment and then based on this information, take the necessary actions. The goal is for the unwanted behaviour to stop and for the behaviour to change for better. The employer must follow up on the situation to make sure that the instructions and guidelines are obeyed in the workplace.

Because the obligation to act rests with the employer, the employer is the one to decide on how the issue is solved. The representative of the employer may invite the parties individually to discuss the matter and the incident. These discussions are confidential and meant to shed light on the facts of the matter. If the workplace

has a code of conduct for these situations, the employer's representative may assess whether this code has been followed or not.

After the individual discussions, it is often appropriate for the employer to invite both parties to discuss the matter together to decide how the parties must behave in the future. It is advisable to draw a written record of this meeting. The employer must then monitor the situation and intervene immediately if the rules agreed upon together are not followed.

The employer has the right to use the help of the occupational health care or an external or internal expert in resolving the matter. Employees are typically supported by OHS representatives or shop stewards.

If the employer has been notified of several cases of inappropriate treatment, a risk assessment must be carried out. This is done to find out if there is something in the working conditions that exposes the working community to inappropriate treatment.

When inappropriate treatment, harassment or bullying has occurred in the workplace, it is very important that the case is handled and settled in a fair manner following the procedures set together. If there is something in the ways of working or the working conditions that has led to the inappropriate behaviour, it is important to solve those problems. Solving problems successfully and taking concrete measures reinforce trust in the working community. Inappropriate behaviour must not be tolerated in any shape or form.

Workplace mediation

Conflicts in the workplace may be based on misunderstandings, rumours or gossip. Conflicts may grow out of proportion and last a long time when they are not handled early enough. Wrong interpretations, non-communication and silence fuel the conflict situation.



Workplace mediation is an action model designed for workplaces for solving conflicts. Workplace mediation applies the procedures successfully used in mediation in criminal cases.

In the mediation process, the parties in a dispute themselves have to take responsibility for their actions and for the conciliation. The mediator is not there to solve the problem but rather to empower the parties to find a solution themselves. The mediator is neutral and impartial and his or her task is to help the parties reach an agreement. The mediator can be a representative of the occupational health care or an external expert that has been trained on mediation and is accepted by all parties of the conflict.

Occupational Health and Safety Authorities

Occupational Health and Safety Authorities supervise the employers. Cases of harassment and inappropriate treatment are monitored following a request by a client and in workplace inspections carried out by OHS inspectorates.

The OHS Authority monitors that the employer carries out the necessary measures to handle harassment after it has become aware of it. The authority assesses whether the measures are sufficient. The goal of the monitoring and supervision is that harassment ends and that the employer is guided on creating procedures for possible future cases of harassment.

The OHS Authorities do not take on a role of a legal assistant of clients in the workplace or settle conflicts. Nor do they apply for compensation on behalf of a client in cases of inappropriate treatment. Supervision initiated by a client is usually carried out through a written procedure. General guidance and advice is given orally.

OHS Authorities also monitor workplace discrimination.



Workplace Discrimination

Only an employer or a representative of an employer can be found guilty of discrimination. Discrimination is prohibited in recruitment, during the employment and when terminating employment. Discrimination may occur even before recruitment when an employer sets the criteria for employment or advertises the job.

Discrimination refers to treating people differently based on one or many of the factors defined as prohibited in the Non-Discrimination Act. According to the Non-Discrimination Act it is prohibited to discriminate someone based on their age, ethnic or national origin, nationality, language, religion, conviction, opinion, political activity, labour union activity, family ties, health, disability, sexual orientation, or other personal characteristics.

The Act on Equality between Women and Men prohibits discrimination based on gender, gender identity and expression of gender.

Every employer is obligated by law to promote equality and develop the working conditions and procedures that are followed when selecting personnel and making decisions concerning the personnel.

According to section 3 in chapter 47 of the Criminal Code an employer or its representative who, when advertising a job, selecting an employee or starting employment, without an important and justifiable cause places an employee in a less favourable position, is to be sentenced for work discrimination to a fine or to imprisonment for a maximum of six months.

If none of the above-mentioned grounds for discrimination apply to the applicant or employee, it is not considered a case of discrimination. Furthermore, the employer needs to be aware of the basis for discrimination, and there needs to be an objectively observable connection between the employer's awareness of discrimination and his/her actions. However, even unintentional discrimination is considered illegal. The motivation for action might be, for example, financial.

Discrimination may be:

- direct discrimination, where a person is treated less favourably than another person is treated, has been treated or would be treated in a comparable situation
 - for example, a foreign employee is paid lower wages than a Finnish employee without a just cause, or dismissals are based solely on age
- indirect discrimination, where an apparently neutral provision, criterion or practise puts a person at a particular disadvantage compared with other persons
 - for example, an immigrant is not hired because the employer requires perfect Finnish language skills even though performing the job itself does not require it
- harassment, such as jokes or derogatory comments on race or sexual orientation, or degrading or humiliating behaviour. Harassment needs to be relatively serious where it creates an intimidating, hostile, degrading, humiliating or offensive environment
 - both an employer and an employee might discriminate but it is the employer's actions that are under the scrutiny of the OHS authorities
- an instruction or order to discriminate
 - for example, an employer forbidding the recruitment of a disabled person
- discrimination by association, where a person is put in a less favourable position because of his or her family ties or connections
 - for example, a person is treated less favourably because their child is disabled, or because their close friend is known to have a particular religious affiliation

- discrimination by presumption, where the discrimination is based on an assumption that may not be true. A person may, for example, be put in a less favourable position because he or she is assumed to belong to a sexual minority or a particular religious group – here the discrimination is based on an assumption that might not be true at all
- multiple and/or intersecting discrimination, where a person is discriminated based on several factors and on different bases in different situations
- denying a disabled person reasonable job adjustments.

No one may be placed in an unfavourable position or treated in such a way that they suffer adverse consequences because they have taken action to safeguard equality. This so called “prohibition of victimisation” means, for example, that an employer must not scrutinise an employee’s work performance more closely just because they have reported a suspicion of discrimination to the OHS authorities.

An unfavourable position means, that the employer or the employer’s representative has through their actions or negligence put an employee in an inferior position regarding e.g. a benefit, a duty, a procedure, basis for selection, etc. compared to other employees or to practises generally accepted in the labour market. Discrimination includes the idea of comparability of situations.

The definition of discrimination involves defining when different treatment is acceptable. Different treatment is not considered discrimination if the employer can present a justified purpose for it as defined in the Non-Discrimination Act (12§). In such a case, the different treatment must be based on a genuine and decisive requirement relat-



ing to the specific type of occupational activity and the performance of the activity.

Furthermore, it is presumed that the purpose for the justification of unequal treatment is justifiable and the means applied are in due proportion. According to section 2 in chapter 2 of the Employment Contracts Act treating employees unequally must be based on justified reasons. For example, a particular religious affiliation may be required of a parish employee if the work tasks include participating in religious services.

According to the Non-Discrimination Act, unequal treatment based on age or domicile is not considered discrimination when it has an objectively and appropriately justifi-

able purpose that is founded on employment policy or the unequal treatment arises from age limits adopted in qualification for retirement or unemployment benefits. Nor is a procedure based on an equality plan and intended to implement the intention of the Equality Act considered discrimination. By 1 Jan 2017 each workplace employing more than 30 permanent staff must have an equality plan.

Positive discrimination can be allowed and is lawful if it is aimed at achieving genuine equality. For example, granting an extra benefit to a disabled person in the workplace to ensure true equality cannot be considered discrimination of other employees.

When asked, the employer must promptly provide a written account of the justification of its actions to a disabled person who thinks that s/he has been discriminated in the job application process or in the employment relationship because reasonable job adjustments have not been made.

Procedure for work discrimination cases

- ask for justification for the actions
- if you do not get justifications or think that they are insufficient, contact OHS authorities or your labour union.

The Non-Discrimination Ombudsman and The Ombudsman for Equality

The Non-Discrimination Ombudsman gives general guidance, advice and recommendations relating to preventing discrimination and promoting equality in the workplace and helps the workplaces in drawing their equality plans. Furthermore, the ombudsman can help those that have experienced discrimination when their case is being reviewed.

The Ombudsman for Equality supervises the compliance with the law on the equality between men and women. The ombudsman gives advice on questions relating to the Equality Act.

Statutes

Occupational Safety and Health Act
(738/2002)

Act on Occupational Safety and Health
Enforcement and Cooperation of Occu-
pational Safety and Health at Workplaces
(44/2006)

Occupational Health Care Act (1383/2001)

Act on Equality between Women and Men
(609/1986, amendments 1329/2014)

Non-Discrimination Act (1347/2014)

Employment Contracts Act (55/2001)

Criminal Code (39/1889)

Sources and further information:

www.ttk.fi

www.tyosuojelu.fi

Häirinnän ja muun epäasiallisen kohtelun
valvontaohje - Instructions for monitor-
ing harassment and inappropriate treat-
ment - Ministry of Social Affairs and Health
1841/2010 - in Finnish only

Ohje työ syrjinnän valvonnasta - Instruc-
tions for monitoring work discrimination -
Ministry of Social Affairs and Health 3025 /
2011 - in Finnish only

Suomen sovittelufoorumi ry - Finnish Fo-
rum for Mediation

www.sovittelu.com/tyoyhteisosovittelu

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Better work