



CORONAVIRUS & DISCRIMINATION

What are your responsibilities as an employer?

vault.

As the Coronavirus (COVID-19) pandemic continues to spread there has been a worrying rise in racial harassment, bullying, and discrimination in the workplace.

In the US, the Center for Disease Control (CDC) has issued guidance on reports of an increase in discrimination in people at work, particularly against people of Chinese heritage, warning that COVID-19-related "fear and anxiety can lead to social stigma towards Chinese or other Asian Americans."

While in the UK, trade unions are warning of an increase in discrimination in people at work and advice from employment body the Advisory, Conciliation and Arbitration Service (ACAS) reminds organizations that: "Employers must not single anyone out. For example, they must not treat an employee differently because of their race or ethnicity."

As tensions rise, employers are advised to remind staff of the behavior expected of them and that treating employees of certain nationalities differently or jokes and banter related to Coronavirus could expose the company to discrimination claims.

The figures in perspective

Law firm Lewis Silkin LLP estimates that around 59% of large multinational enterprises have already put into place a plan to respond to pandemic diseases such as Coronavirus. Typical measures include social distancing and remote working arrangements but it is thought that only around 25% of enterprises are capable of offering remote working options to their staff.

Already the impact of Coronavirus has gone far beyond that of the outbreak of severe acute respiratory syndrome (SARS) in 2003, when there were over 8,000 reported cases of SARS and just under 800 deaths. Throughout the SARS outbreak similar race-related discrimination was seen against people of Chinese and Asian heritage.

Tensions are clearly high but as with SARS, while employers do not have control over the spread of the disease, they do have control over the impact of related incidents of discrimination. that surface at work

In order to act however, employers do need to be able to capture and to be made aware of incidents of workplace discrimination.

How do employees report discrimination?

The Director General at the World Health Organization (WHO), Tedros Adhanom, has spoken out on the situation: "It's appalling to see new reports of people being targeted due to their race, ethnicity or purported association with COVID-19. WHO once again calls for an end to stigmatization & discrimination at a time when solidarity and compassion must be paramount," Tedros said on Twitter.

But with less than 25% of workplace discrimination, harassment, and bullying reported, many legacy tools for reporting incidents at work are ineffective, anonymous hotlines among the least used mechanisms. Furthermore, employers will be unable to rely simply on a policy that states that discrimination and harassment is not tolerated, they will have to prove that they took appropriate steps to mitigate the discrimination.

Law firm Lewis Silkin has advised that if a person who is a national from badly-affected area, or is assumed to be from such an area, is racially harassed or discriminated against by another employee, the employer is probably liable.

"Employers can be vicariously liable if their employees racially harass colleagues, even if the employer does not know and would disapprove of such behavior. The employee themselves will also be personally liable," Lewis Silkin says.

"Employers will only avoid liability if they can show that they took 'all reasonable steps' to prevent employees behaving in such a manner."

Employers need to put in place effective tools encouraging employees to speak up and report if they fall victim to or witness discrimination of any kind. This should be coupled with a cultural reminder from leadership stressing the importance of nipping prejudiced behavior in the bud. Anyone that witnesses the perpetuation of negative stereotypes should be encouraged to report it.

Taking reasonable steps might mean having well-publicized diversity and harassment policies and training all staff on the issue.

Managers in particular must be trained about their responsibility to identify and prevent discriminatory behavior. If the harassment is done by a third-party (such as a customer or visitor), the employer might not be liable for race discrimination, but the employee may have other claims.

Employers will be liable if they fail to protect employees from harassment by third parties and the employer's failure is itself due to discriminatory reasons.

-Lewis Silkin LLP

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CORONAVIRUS BY NUMBERS

