



Rebecca Ford



Samantha Ellaby

Managing Workplace Harassment, Discrimination and Bullying in the United Arab Emirates

Managing workplace harassment, discrimination and bullying is an increasingly topical issue in the United Arab Emirates (UAE) as employers are encountering complaints of this nature more frequently. Whilst there is no free standing anti-harassment law in the UAE, there are a number of legal provisions which may be triggered in the context of workplace harassment, discrimination and/or bullying (including the Anti-Discrimination Law (Federal Decree No. 2 of 2015) which was introduced last year). This article explores some of the key legal provisions to consider in relation to workplace harassment, discrimination and bullying together with some practical ways of managing such issues.

IS HARASSMENT, DISCRIMINATION AND/OR BULLYING A CRIMINAL OFFENCE?

Whether or not workplace harassment, discrimination and/or bullying amounts to a criminal offence largely depends on the subject matter of the conduct.

For example, comments of a sexual nature could potentially amount to an offence under the Penal Code (Federal Law No. 3 of 1987).

Derogatory comments relating to religion could potentially trigger criminal liability under either the Penal Code (which includes blaspheming any of the divine recognized religions) or the more recently introduced Anti-Discrimination Law.

The Anti-Discrimination Law is primarily aimed at preventing religious extremism. However, its terms are fairly widely drafted and include, for example, disparaging the "Devine Entity" or disrespecting any of "*the heavenly religions – Islam, Christianity and Judaism*".

Whilst the majority of reported prosecutions under the Anti-Discrimination Law appear to relate to comments made publicly (on social media forums, for example) there have also been reports of prosecutions for comments made in a private forum. For example, a Syrian doctor was jailed for seven years and fined AED 500,000 for insulting God and Islam whilst arguing with the owner of the medical clinic for which he worked. Prosecutions could therefore conceivably be made in relation to negative comments made by one employee to another in relation to one of the "*heavenly religions*", for example.

On the other hand, discriminatory comments or harassment related to an employee's age or marital status, for example, or relating to a religion other than one of the "heavenly religions" would not necessarily amount to a criminal offence.

WHAT SHOULD EMPLOYERS DO IN RESPONSE TO HARASSMENT, DISCRIMINATION AND/OR BULLYING COMPLAINTS?

Reporting obligations

There is a general duty under the Penal Code to report a crime that has been committed. If the outcome of an employer's internal investigation confirms that an employee has made derogatory statements regarding Islam, for example, the employer may be duty bound to report this matter to the police.

Employers may also have obligations to report criminal acts of its employees to other governing bodies.

Grievance investigations

There is no statutory grievance procedure under the Labour Law (*Federal Law No. 8 of 1980, as amended*) or any statutory obligation to consider an employee's grievance. It is however often in an employer's interests to investigate an employee's complaint, particularly where it is of a serious nature. Where an employer has a grievance procedure, this should be followed.

Disciplinary action

Where allegations of harassment, discrimination and/or bullying are upheld, an employer will likely wish to take disciplinary action against the relevant employee.

Before doing so, the company would need to follow the statutory minimum disciplinary process set out under the Labour Law in addition to any more onerous obligations set out in the company's internal disciplinary procedure, if relevant.

Article 120 of the Labour Law sets out an exhaustive list of circumstances in which an employee's employment may be terminated summarily and without end of service gratuity. Discriminating against a colleague will not necessarily, of itself, fall under Article 120 of the Labour Law. Being convicted of a criminal offence under the Anti-Discrimination Law, for example, should enable an employer to terminate under Article 120 of the Labour Law, however it is of course likely to take some time before such a conviction is confirmed.

ARE THERE ANY POTENTIAL LIABILITIES FOR EMPLOYERS IN RELATION TO WORKPLACE HARASSMENT AND BULLYING?

Liability for acts of employees

An employer (or its managers) may be liable for the acts of its employees.

For instance, under the Anti-Discrimination Law, a "*representative, director or agent*" of a company could be found liable if an employee commits an offence acting in the company's name or interest.

Under the Penal Code, the company itself can be held criminally liable for acts committed by its "*representatives, directors or agents*" acting on its behalf.

It is therefore important that, in the event of a dispute, an employer can show that an employee was not acting in the company's name or on its behalf when making discriminatory or harassing comments, for example. Having clear documentary evidence that employees have been educated on unacceptable conduct relating to harassment, discrimination and bullying should assist in this regard.

Workplace Injuries

Workplace harassment, discrimination and/or bullying can, on occasions, lead to employees taking periods of sickness absence for related mental health issues such as stress, anxiety and/or depression.

Employers must consider whether such mental health issues may trigger any obligations under the Labour Law and/or under the terms of any relevant insurance policy.

The Labour Law prescribes the fixed compensation payable in relation to certain workplace injuries. Such injuries are limited to physical injuries rather than mental health issues. However, other provisions in the Labour Law (such as setting out the obligation to pay for an employee's medical treatment) relate to "*workplace injuries*" which are defined as "*any other injury arising from the worker's work and sustained by the worker while performing and as a result of such work*". This could conceivably be extended to apply to mental health injuries suffered in the workplace.

WHAT CAN EMPLOYERS DO TO MITIGATE THOSE RISKS?

Educating employees on unacceptable conduct relating to discrimination, harassment and bullying is key.

Sometimes perceived discrimination, harassment and bullying may arise as a result of cultural differences. For example, religion is of course an integral part of UAE culture whereas, for nationals of other jurisdictions, it may not be viewed as quite so fundamental and there may be a lack of understanding of the potential implications of making any derogatory comments regarding

one of the "heavenly religions" in the UAE. Clearly informing employees of acceptable and unacceptable conduct in the UAE can assist with this.

Additionally, as explained above, being able to evidence that employees were clearly notified of unacceptable behaviours in the workplace but carried out such behaviour anyway should assist in demonstrating that, in doing so, an employee was acting outside of his/her employment. This should reduce the risk of a company being found liable for such acts of its employees.

SUMMARY

Complaints of this nature are extremely common in some other jurisdictions but, to date, have been relatively uncommon in the UAE. As the UAE workforce becomes increasingly more sophisticated and informed, employers may continue to see a steady increase in the number of harassment, discrimination and bullying complaints and must ensure that they are sufficiently informed and prepared to deal with such complaints.

ACTIONS FOR EMPLOYERS

In light of the above, employers would be well advised to take the following actions:

- Review any existing policies relating to an employee's conduct to ensure that it sufficiently addresses issues relating to harassment, bullying and discrimination both in the workplace and on social media.
- Consider implementing a separate policy relating to harassment, bullying and discrimination to demonstrate the company's commitment to avoiding such issues.
- Ensure that employees are regularly trained on such policies.
- Ensure that managers are briefed on how to deal with discrimination, harassment and bullying allegations and, specifically, that they know to promptly escalate such matters to HR or more senior management so that a view can be taken on how best to deal with the matter.

Rebecca Ford is a Partner and Samantha Ellaby is a Senior Associate Partner at Clyde & Co. For questions about this article, they can be reached at rebecca.ford@clydeco.com and samantha.ellaby@clydeco.com, respectively.