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**Being Filmed at Work – Employee Rights and Employer Duties**



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Almost everyone nowadays has a smart phone with a video camera. It can be a great tool for capturing spur of the moment activity, but, increasingly, it is being used to film workers going about their daily business.

Concerns have been expressed by UNISON members working at public counters, out in the community or in clients’ homes, that they are being intimidated by people filming them. Often, the conduct does not stop at filming but is accompanied by threats to upload the recording to social media and identify the worker.

It may not be unlawful to film workers who are either in a public place, and so have no expectation of privacy, or are in someone else’s home, where the Data Protection Act (DPA) provides an exemption. However, it is certainly unlawful to act in a way that deliberately threatens someone. In addition, the DPA exemption does not apply to businesses who host footage taken in public or in a private home.

The Protection from Harassment Act 1997 prohibits ‘a course of conduct which amounts to harassment of another. A course of conduct must involve conduct on at least two occasions and harassment is defined as causing a person alarm or distress (*section 8(3)*).

The Court of Appeal in England has held that conduct, which on its own is entirely lawful, may be harassment in context and when repeated. (*Iqbal v Dean Manson Solicitors [2011] EWCA Civ 123 approved in Marinello v City of Edinburgh Council [2011] CSIH 33*)

Victims of harassment can sue the perpetrator for damages and can obtain a non-harassment order, which can lead to the perpetrators arrest if they break the conditions of the order.

If footage is posted on social media, the the host becomes the data manager and is bound by the terms of the DPA. If the company is

**KEY POINTS:**

* **Everyone has the right to be protected from harassment.**
* **Just because filming in public or your own home is not unlawful does not mean it is not harassment.**
* **Social media sites that refuse to remove footage when asked are in breach of the Data Protection Act**
* **The employer is responsible for harm caused by third parties where they should have prevented it and knew it would cause harm.**

notified that personal data in the form of video has been ‘processed’ without the consent of the ‘data subject’ ie. the worker, it should be removed from the site. If it is not, a complaint can be made to the Information Commissioner who can order its removal and award damages.

However, suing individuals, who often have limited means, is difficult and unsatisfactory as it only resolves that particular problem rather than addressing the issue of protecting staff in the first place.

Employers have a duty to provide a safe working environment and safe systems of work. The risks to be guarded against now could not have been imagined when the Health & Safety at Work Act was passed in 1974. Nevertheless, the employer must assess all potential risks, both physical and mental, that may impact on their employees’ health.

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Case Study: A housing worker tells her boss that she is being filmed by an anti social tenant when she tries to discuss their behaviour. The tenant posts the film on social media with comments that worker is ‘for it.’

The employer has no policy on filming and takes no action. As a result of the online comments the worker is shouted at in the streets as she goes about her job. She puts up with this for a few weeks before suffering so much stress that she becomes ill and goes of sick.

The employer’s failure to risk assess the situation and take appropriate action to protect the employee leaves them potentially liable for any damage suffered.

In addition to the employer’s duty to protect their employees’ health and safety, the employees themselves have a duty to act safely. This includes removing themselves from a situation which puts their physical or mental health at risk.

As with all health and safety issues, the focus should always be on prevention or reduction of risks. This should lead employers to develop policies and procedures on how staff should respond to unwanted filming and also detail what action the organisation will take against users who attempt to intimidate staff by filming them.

**Action for Branches**

* Follow the UNISON guidance on drafting safe working policies.
* Ensure that all incidents of unwanted filming are recorded and reported to the employer.
* Agree with the employer what action should be taken when employees are filmed without consent.
* Refer any cases where members suffer any detriment as a result of unwanted filming to the full time official for further advice and assistance.

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