# Employment tribunals redefine harassment with landmark rulings on language, gestures and dress codes



In recent months, a series of employment tribunal rulings have shed light on the sometimes surprising nature of what constitutes lawful and unlawful conduct in the workplace. From seemingly innocuous comments to displays of harassment, these decisions are redefining boundaries around workplace behaviour.

One of the more striking cases involved a worker who was called "bald" during a heated exchange, which a judge ruled constituted a breach of equality laws. This decision stemmed from a case brought by electrician Tony Finn, who argued that the derogatory term used by his supervisor was inherently linked to sex. The tribunal upheld Finn's claim, determining that such remarks could be categorised as sexual harassment and dismissed the appeal from his former employer, the British Bung Company. In an environment striving for inclusivity, the ruling highlights the sensitivity surrounding language and its implications.

Equally significant was the ruling regarding the unsolicited birthday card sent to Kani Toure, an HMRC employee who had expressed a desire for minimal contact during a period of sick leave. The tribunal ruled in favour of Toure, awarding her over £25,000, affirming that sending a card against her stated wishes constituted harassment. This case underscores an employer’s obligation to respect an employee's needs, particularly concerning mental health.

In a notably bizarre turn, Sam Nunns, a head chef in the Lake District, received nearly £80,000 after being subjected to suggestive singing by his manager. The incident involved the performance of Victoria Wood’s ‘Ballad of Barry and Freda’, which the tribunal deemed humiliating. This ruling demonstrates that even humorous actions can cross a line when they invoke sexual innuendo and lead to feelings of discomfort.

Moreover, language deemed derogatory, such as referring to women as "birds", has been condemned as sexually harassing. A case at a whisky investment company culminated in a more than £50,000 payout for a female employee who reported widespread inappropriate comments from her colleagues. This case reinforces the need for organisations to foster an environment free from gendered language that objectifies.

In contrast, not all workplace behaviours have been outlawed. An air kiss, for example, was deemed lawful after an employment judge rejected the claim of harassment in a hospitality context. The ruling concluded that such gestures could not be categorised as sexual conduct, suggesting that interpretations of behaviour can vary significantly depending on context and intent.

Interestingly, a decision was also made concerning dress codes, where a recruitment company was found culpable for wrongfully dismissing an employee over their choice of footwear. The tribunal ruled that Elizabeth Benassi’s termination for wearing trainers was not justified, further illustrating the complexities surrounding workplace attire policies and how they can impact employee rights.

Rounding out this survey, the tribunal ruled against the notion that asking a female employee why she wants to work constitutes acceptable dialogue—an outdated viewpoint reflecting persistent gender biases. Such questions not only promote stereotypes but also reinforce unequal expectations based on sex.

Harassment through seemingly innocuous comments, such as sighing in frustration, has also been scrutinised rigorously. Robert Watson's case illustrated how even non-verbal cues can constitute harassment if they contribute significantly to a negative work environment, especially for employees with disabilities such as ADHD.

As more individuals come forward with claims of workplace misconduct, the evolving landscape of employment law illustrates a growing recognition of the nuanced nature of workplace interactions. These rulings serve not only to protect employees but also to encourage organisations to create environments that uphold dignity and respect for all.

### Reference Map

1. Core focus on tribunal rulings and their implications.
2. Reflection on the context of racial remarks.
3. Mention of harassment based on sexual orientation and fairness in disciplinary processes.
4. Stressing the importance of reasonable adjustments in recruitment, particularly for neurodivergent candidates.
5. Confirmation of the necessity of reasonable adjustments.
6. Addressing issues of bias in tribunal processes.
7. Clarification on the nature of harassment awareness.

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2. <https://www.clydeco.com/fr/insights/2023/10/top-5-recent-workplace-developments-october-2023> - An employment tribunal found that a manager's use of an offensive racial term during a race awareness training session was unfairly dismissed and discriminated against due to his disability. The tribunal emphasized the importance of context and the manager's remorse in its decision. ([clydeco.com](https://www.clydeco.com/fr/insights/2023/10/top-5-recent-workplace-developments-october-2023?utm_source=openai))
3. <https://www.twobirds.com/en/insights/2023/uk/frontline-uk-employment-law-update-edition-25-2023-case-updates> - The Employment Appeal Tribunal explored a case where an Assistant General Manager at Virgin Active Limited was accused of bullying and harassment based on comments related to sexual orientation, race, and nationality. The tribunal examined the fairness of the disciplinary process and the evidence presented. ([twobirds.com](https://www.twobirds.com/en/insights/2023/uk/frontline-uk-employment-law-update-edition-25-2023-case-updates?utm_source=openai))
4. <https://www.womblebonddickinson.com/uk/insights/articles-and-briefings/neurodiversity-and-employment-tribunal-cases-2023-update> - A case involving AECOM Ltd and a job applicant with dyspraxia highlighted the employer's duty to make reasonable adjustments during the recruitment process. The tribunal ruled that the employer should have facilitated an oral application due to the applicant's difficulties with written communication. ([womblebonddickinson.com](https://www.womblebonddickinson.com/uk/insights/articles-and-briefings/neurodiversity-and-employment-tribunal-cases-2023-update?utm_source=openai))
5. <https://www.wiggin.co.uk/insight/worked-up-your-monthly-employment-immigration-law-lowdown-october-2023/> - The Employment Appeal Tribunal upheld a ruling that an employer failed to make reasonable adjustments for a job applicant with dyspraxia, who requested an oral application instead of an online form. The tribunal emphasized the employer's duty to accommodate such requests. ([wiggin.co.uk](https://www.wiggin.co.uk/insight/worked-up-your-monthly-employment-immigration-law-lowdown-october-2023/?utm_source=openai))
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