

# Banter in the workplace

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"What's in a name?" asks Shakespeare's Juliet, declaring that a rose would smell just as sweet whatever we call it. But that argument is unlikely to hold water in today's working environment.

## It was just banter

A 'term of endearment' suggests affection, but such expressions may result in individuals feeling harassed or discriminated against. That's important to consider when you see how workplace banter is driving a surge in claims against employers: analysis identified a 45% rise in such claims between 2020 and 2021.

The [Equality Act 2010](#) protects people from discrimination, harassment and victimisation related to one of several protected characteristics. The protected characteristics are:

- **age**
- **disability**
- **gender reassignment**
- **marriage and civil partnership**
- **pregnancy and maternity**
- **race**
- **religion or belief**
- **sex and sexual orientation.**

For banter to be unlawful, its purpose or effect must violate a person's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment.

Employers need to perform temperature checks on the underlying culture of their business to avoid problems arising.

Employees might think it's just part of a jokey environment. But their comments may constitute bullying or harassment if they subject someone to discriminatory

jokes regarding age, gender, sexual identity, race or nationality.

## Cases

One 69-year-old plumber was known as 'half-dead Dave' by colleagues and won £25,000 in damages for age-related discrimination. A woman whose boss humiliated her in front of colleagues and customers by calling her a 'dinosaur' because she was menopausal received a similar award.

Frances Fricker, a woman in her 30s, won her [sexual harassment claim](#) after her boss referred to her as a "good girl", even after she objected and harassed her to change her profile images on social media, saying she looked fat. As the tribunal judge said: "Some phrases, whilst not regarded as taboo, are generally regarded as inappropriate in the workplace. Referring to a woman in her late-30s with a school-age child as a girl is demeaning."

The judge went on to say: "Language evolves over time. Words and phrases that might once have seemed harmless are now regarded as racial, homophobic and sexist slurs." As reflected in a claim for racial harassment, upheld after an employee of Indian origin was called a 'cheeky monkey'. However, the tribunal accepted this could, in other circumstances, have been considered innocent banter.

## What can you do?

Outcomes such as this demonstrate how hard it can be to monitor colleague interactions as an employer. Comments may rely on context, and there is often a fine line between what may be considered harmless banter and what may amount to unlawful discrimination or harassment under the Equality Act.

Defending unlawful discrimination and harassment cases is expensive and time-consuming, with no limit on award sums. Therefore, employers must mitigate the risk by implementing appropriate policies and providing regular diversity and equality training for staff.

A clear path for staff to raise concerns is also essential. When employees raise such concerns, action must be clear and purposeful, bearing in mind that it may not be the member of staff who complains but a colleague who is unwilling to stand by and allow name-calling or bullying to occur.

For guidance and advice on this complex area of law, contact employment lawyer [Karen Cole](#) today.

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