

New Duty on UK Employers to Prevent Sexual Harassment

September 24, 2024

On 26 October 2024, the [Worker Protection \(Amendment of Equality Act 2010\) Act 2023](#) will come into force, introducing a new positive duty on employers in the UK to take 'reasonable steps' to prevent the sexual harassment of their employees in the course of their employment. The act will give employment tribunals the power to uplift compensation by up to 25% where an employer is found to have breached this new duty.

Current state of play

In the employment context, sexual harassment occurs where a person engages in unwanted conduct of a sexual nature which has the purpose or effect of either violating another person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. The current law is not being replaced.

In summary, the existing position is that:

- Employers are vicariously liable for sexual harassment committed by their employees in the course of employment (employers are not liable for sexual harassment by third parties).
- There is a defence for employers if they are able to demonstrate that they took "all reasonable steps" to prevent the sexual harassment from taking place (although, in practice, this defence is rarely used successfully).

What is the new duty?

The new duty does not create a stand-alone claim that employees can bring in an employment tribunal, but, under the new law, there will be a shift in focus to a proactive and preventative duty.

The act will introduce a positive obligation on employers to take "reasonable steps" to prevent the sexual harassment of employees in the course of their employment. In the event an employee succeeds in bringing a sexual harassment claim, the employment tribunals will have the power to uplift compensation by up to 25% if there has been a breach of the duty. The Equality and Human Rights Commission (EHRC) will have independent power to enforce the new duty and undertake its own investigations.

The EHRC has consulted on proposed updates to its guidance in respect of the new preventative duty. The proposed drafting of the guidance states that whether an employer has taken "reasonable steps" will be an objective test, and each case will be fact-specific. [Further details of the consultation are available](#) on the EHRC website.

The draft EHRC guidance states that the new duty requires employers to take reasonable steps to prevent third-party sexual harassment of their employees. Interestingly, however, the act itself does not extend potential employer liability to third-party acts of sexual harassment. So, while the EHRC may have the power to take enforcement action against an employer in these circumstances, an employee does not currently have the ability to bring a claim of sexual harassment against their employer on this basis alone. Ultimately, the act may be subject to further amendments following the election of the Labour government and its [Plan](#)

[to Make Work Pay](#) proposals, which include a commitment for 'employers to create and maintain workplaces and working conditions free from harassment, including by third parties'.

What can employers do to prepare?

We have summarized below some of the key steps that employers can (and should) take to comply with the new duty to prevent sexual harassment:

1. Risk assessment

The draft EHRC technical guidance advises an employer to, at a minimum:

- Consider the risks of sexual harassment occurring in the course of employment.
- Consider what steps it could take to reduce those risks and prevent the sexual harassment of its employees.
- Consider which of those steps would be reasonable for it to take.
- Implement those reasonable steps.

What is reasonable will vary and will depend on factors such as the employer's size, the sector it operates in, the work environment and its resources. Undertaking risk assessments will assist employers in understanding various factors which may be increasing or contributing to the sexual harassment risk – including power imbalances, remote working, social events, culture of bystanding, reporting mechanisms, diversity and inclusion. Employers need to identify the real risks in their own business and then consider what can be done to mitigate those risks. Risk assessments should be undertaken periodically to ensure continued monitoring and engagement with issues, and to ensure workplace-related vulnerabilities are addressed swiftly.

2. Training

Training for all employees – and bespoke training for managers and senior employees – will need to be effective in order to form part of a defence as a reasonable step an employer has taken to prevent sexual harassment in the workplace. Training that is simply a tick-box exercise will not be sufficient. Training should be tailored, bespoke, relevant to the risks alive in the business, designed for particular employee audiences and undertaken periodically. Employers should keep a written record of employee attendance at training events.

3. Policies and procedures

Ensure current policies and practices are up to date, including the following:

- Anti-discrimination and harassment policy
- Diversity, equity and inclusion (DEI) policy
- Disciplinary and grievance policies

A clear and comprehensive set of policies is not only advisable as a matter of good employment practice and ensuring employees are aware of the standard expected, but also, they will assist in reducing legal risk for employers. Policies should define sexual harassment, give examples of what it is, and outline everyone's responsibilities for preventing and tackling it. Additionally, reporting channels should be made clear to employees so that any concerns or complaints can be reported and investigated fully, fairly and comprehensively and action taken against wrongdoing. This will signal to employees that the organisation will take all such concerns or complaints seriously.

4. Workplace culture

Foster a culture of inclusivity, dignity and respect, along with an environment of prevention and zero-tolerance of harassment and discrimination. Achieving culture change will underpin greater engagement with key issues and buy-in from the very top of the organisation. Embedding cultural practices will help improve communication with the workforce, encourage a 'speak up' culture and serve as a practical means by which employers can continue to mitigate sexual harassment risk in the workplace. For example, it has been shown that an active bystander culture can be beneficial in fostering a team of people speaking up and flagging concerns at a much earlier stage.

How we can help

We have extensive experience advising employers in this space. If you would like to discuss ways in which Cooley can assist in relation to the new duty to prevent harassment, please contact a member of the Cooley UK employment team or your usual Cooley contact.

For additional information on the new duty, check out our recent [HR Network 2024: UK Legal Update webinar](#), now available for on-demand viewing.

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