

Sexual harassment: the new duty to prevent



Last June, we looked at the proposal of the Worker Protection Bill, which was expected to result in a positive obligation being placed on employers to take all reasonable steps to prevent sexual harassment of their employees.

A year later, we can confirm that The Worker Protection (Amendment of Equality Act 2010) Act 2023 (the Act) will come into force on 26 October 2024 after a consultation carried out by the Equality and Human Rights Commission (EHRC) looked into changing the guidance on workplace sexual harassment.

A recent case, [*Miss Holly Merriman v Bugibba Independent Limited*](#), saw an award of £31,410.91 by the Employment Tribunal after Miss Merriman, age 17, was found to have been subject to sexual harassment and victimisation from a colleague. The perpetrator “put his hands on her body” and pulled her into a “bear hug”. This example has highlighted the importance of dealing with complaints of sexual harassment in the workplace promptly, properly and sensitively.

In this update, we look at the new duty and what employers can do to prepare for its introduction.

What is the duty?

The Act introduces a new proactive duty on employers to prevent sexual harassment in the workplace. An employer must take reasonable steps in ensuring that sexual harassment does not arise during the course of employment.

The new duty is an ‘anticipatory’ duty, so employers should consider and anticipate scenarios where workers



may be subject to sexual harassment in the period of their employment and take action to prevent such harassment taking place.

This extends beyond colleagues and requires employers to take reasonable steps to prevent sexual harassment of their workers by third parties such as customers, clients, service users, patients and members of the public.

What are reasonable steps for prevention?

There are no criteria for employers to follow because it is widely understood that each employer is different. An objective test will need to be carried out based on a number of factors, which include but are not limited to:

- Nature of the workplace;
- Risks in the workplace;
- Size of the employer;
- Sector the employer operates in; and
- Type of third parties the workers are in contact with.

What can employers do to prepare?

Many employers will already have processes in place to prevent sexual harassment in the workplace. From October, all employers will need to be able to show that they have reasonable steps in place. This could include any or all of the following:

- Establish the risks relating to sexual harassment through risk assessments. This will involve identifying areas in the workplace that have a higher chance of sexual harassment than others. Examples from the EHRC include power imbalances, job insecurity, lone working, customer-facing duties, lack of diversity in the workplace and workers being placed on secondment.
- Complete a review of existing harassment, bullying, equal opportunity and other policies and prepare updates to them where necessary. It is helpful to include case studies and examples of unacceptable workplace behaviour, including that of third parties. Ensure that these policies clearly set out the support and guidance that is available to victims.
- Foster an inclusive culture. Creating and maintaining a zero-tolerance approach to sexual harassment is the best measure an employer can take and is crucial to demonstrating compliance to the preventative duty. By establishing clear reporting lines and procedures, employees can have confidence in the process of privately reporting incidents of sexual harassment in the workplace.
- Provide training to the workforce. Ensure that employees and managers understand employer policies at their induction and through frequent refresher sessions. Training may include being able to spot the signs, approaching employees who may be suffering in silence, and knowing when to take concerns to HR. Training should also include how to hold any such conversations delicately and compassionately, making sure that staff feel they can raise issues outside of a formal reporting process.
- Investigate complaints of sexual harassment and respond to them quickly. The investigator must be impartial, suitably senior and have the necessary skills, experience and time to investigate fully. It can be beneficial to appoint an external third party, such as a law firm to investigate when there is no one internal that can meet these requirements. When providing deadlines to the complainant during an investigation, ensure those are adhered to, so that they do not lose faith in the process.
- Keep a record of the steps taken in response to a complaint. If an employer is ever called upon by the Employment Tribunal to demonstrate the steps they have taken, the position of the employer will be improved if they can point to policies and procedures which are regularly updated, and a timeline of actions taken in relation to each complaint.



What are the risks to the employer?

If an employer does not take reasonable steps to prevent sexual harassment of their workers, the preventative duty will be breached. Where the Employment Tribunal finds an employer to have breached the new preventative duty, the Tribunal has the power to award an uplift in compensation to the employee by up to 25%. Compensation for sexual harassment is uncapped and varies depending on the loss and the severity of the injury to feelings, meaning that a 25% uplift may be considerable in some cases.

How we can help

If you would like help with updating your policies and procedures or dealing with sexual harassment claims, please get in touch with the [employment team](#) who will be happy to help.



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