

## Taking reasonable steps to avoid discrimination and harassment claims



This article looks at how employers can reduce the risks of claims and create a supportive working environment.

In addition, it considers the impact of the Worker Protection Bill, which could potentially result in the most significant development to discrimination law since the Equality Act 2010.

The Bill imposes a proactive duty on employers to take all reasonable steps to prevent harassment of employees, including by third parties, with a compensation uplift if they fail to do so.

### **What is harassment?**

Harassment has a specific definition in the Equality Act 2010. It includes any unwanted conduct related to a relevant protected characteristic (for example, sex, race or disability) which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. In addition to unwanted conduct 'related' to sex, the Equality Act contains a further definition of 'sexual harassment', encompassing any unwanted conduct of a sexual nature which has the same prohibited purpose or effect as other forms of harassment.

In 2018, the Women and Equalities Select Committee (WESC) published a report on the extent of sexual harassment in the workplace. This report, along with campaigns by the Fawcett Society, led to the UK government undertaking its own consultation.

In 2022, the Gender Equality in the Workplace report by Randstad found that 72% of the 6,000 women polled



had experienced or witnessed harassment.

## The future?

In order to address this, the Worker Protection (Amendment of Equality Act 2010) Bill intends to introduce three key amendments to the Equality Act 2010:

1. Impose a proactive duty on employers to take all reasonable steps to prevent the sexual harassment of employees in the workplace.

It is thought that “reasonable steps” may require employers to implement:

- Sufficient and regular training on harassment in the workplace
  - Equal Opportunities policy
  - Harassment and Bullying policy
  - Regular reviews of relevant policies to demonstrate compliance
2. Reintroduce protection against harassment by third parties.
  3. Introduce a compensation uplift of up to 25% where an employer fails to take all reasonable steps to protect employees against sexual harassment. This is designed to encourage employers to tackle the issue of sexual harassment effectively and directly. Compensation for sexual harassment is uncapped and varies depending on the loss and the severity of the injury to feelings. According to the Employment Tribunal’s published statistics, the average sex discrimination award in 2021/2022 was £24,630, with a top award of £184,961. A 25% uplift would therefore considerable increase awards in some cases.

The Bill also provides the Equality and Human Rights Commission (EHRC) will the ability to take enforcement action.

## How can employers prepare for the Bill?

The Bill is very likely to pass, although there is not yet a proposed date for when this may happen.

We recommend that employers act now, so that they can comply with the new law. This could include the following:

- Carry out a review of your existing harassment, bullying, equal opportunity and other policies and update if necessary. It is advisable to include case studies and examples of unacceptable workplace behaviour, harassment, including that by third parties and to offer support and guidance on how to safely intervene and support victims.
- Establish clear reporting lines and procedures so that employees can confidently and safely report incidences of harassment in the workplace. This would usually be by way of a grievance policy.
- Set precedents when dealing with incidents and demonstrate a zero-tolerance approach to poor behaviour.
- Train your workforce – ensure employees and, in particular, managers understand are aware of your policies at both induction and by way of refresher sessions during employment, know how to spot the signs, approach employees who may be suffering in silence, and escalate concerns to HR. Training should also include how to hold any such conversations sensitively and compassionately.
- Set up regular feedback sessions – it is vital that managers are able to deal with performance conversations and deliver constructive feedback to employees to avoid conflict if concerns have not been addressed in a timely manner.



- Investigate complaints – the investigator must be impartial, sufficiently senior and have the appropriate skills, experience and time to investigate fully. When there is no one internal that can meet these requirements, it can be beneficial to appoint an external third party, such as a law firm to investigate.
- Remember the person accused – the reality is that not all allegations are well founded and being accused of harassment can have a significant impact on the person accused. The investigation should be balanced, sensitive, procedurally fair and progressed in a timely manner.

## Why should employers prepare for the Bill?

It is critical that companies ensure that workplace conduct and culture reflects the standards and values acceptable in 2023.

A toxic workplace culture has an extremely negative impact, particularly if harassment is present in the workplace and it is not appropriately dealt with.

Disrespectful, non-inclusive, unethical, aggressive and abusive behaviours will foster toxic cultures, the impact of which cannot be understated. The Chartered Institute of Personnel and Development (CIPD) highlights that toxic workplaces lead to many negative outcomes, such as mental illness and burnout; a lack of job satisfaction, productivity and performance; increased absenteeism and employee attrition.

Employees want to work for employers that provide safe and inclusive workplaces that reflect their values.

## How we can help

For assistance in amending your policies and procedures, dealing with discrimination or harassment claims, please get in touch with our [employment team](#) who will be happy to help.

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[Sarah Glockler](#)

Partner