

# New proactive duty to prevent sexual harassment: is your organisation ready?

22 July 2024

The Worker Protection (Amendment of Equality Act 2010) Act 2023 is set to come into force on **26 October 2024**. The Act introduces a new positive legal obligation on employers to take reasonable steps to protect workers from sexual harassment ([read our previous article](#) for an in-depth look at the new duty).

Ahead of the new duty coming into force, the Equality and Human Rights Commission (EHRC) will update their Sexual harassment and harassment at work; technical guidance to include information on the new duty. The update will be by way of a new section in the chapter “obligations and liabilities under the Act”.

EHRC is now consulting on the new section to make sure that it is clear and helpful. Below we highlight some of the key points from the draft updated section together with the steps employers should be taking to prepare for the new duty:

- The new preventative duty is an anticipatory duty. Therefore, employers should not wait until an incident of sexual harassment has taken place before taking action. On the contrary, the draft updated guidance makes it clear that taking reasonable steps to prevent sexual harassment is a key element of the new duty.
- The duty is wider than just taking steps to prevent workers harassing each other. The draft guidance makes it clear that the duty will extend to the employer also taking steps to protect workers being harassed by third parties. This may seem surprising given that liability for third party harassment was removed as the Act made its way through Parliament and therefore did not become law. However, the draft guidance is clear that the employers’ duty will extend to taking preventative steps to prevent their workers being harassed by third parties (such as contractors, customers, suppliers, members of the public etc.) Although there is no free-standing right for a worker to bring a claim for third party sexual harassment, the EHRC has the power to bring enforcement action against the employer if the preventative duty is breached. Further, the employee could bring a complaint of constructive unfair dismissal (if they have sufficient service) or possibly for personal injury if they suffer an injury (which was reasonably foreseeable) because of the harassment and/or a claim of discrimination should such treatment follow them raising the matter with their employer. Third party harassment featured in the Labour Party’s plans for employment law reform, so the right could be extended in the future to include direct claims for third party harassment.
- The preventative duty will only apply to sexual harassment. The draft guidance clarifies that the duty does not cover harassment related to a protected characteristic (including sex), nor does it apply to less favourable treatment for rejecting or submitting to unwanted conduct.
- What are reasonable steps to prevent sexual harassment will vary from employer to employer. Whilst there is no definitive list of reasonable steps, the draft guidance states that reasonableness will depend on factors such as (but not limited to) the employer’s size, the sector it operates in, the working environment and its resources. There are no particular criteria or minimum standards an employer must meet. Different employers may prevent sexual harassment in different ways, but no employer is exempt from the sexual harassment preventative duty. Therefore, whether or not an employer has taken reasonable steps is an objective test and will depend on the facts and circumstances of each situation.
- If an Employment Tribunal finds that a worker has been sexually harassed and has ordered the employer to pay compensation to the worker, it must consider if and to what extent the employer has complied with the preventative duty. If the Tribunal is satisfied that the duty has been breached, it may consider uplift. Therefore, it isn’t mandatory that an uplift will follow a breach.

- The uplift must be no more than 25% of the amount of compensation awarded to the worker for the sexual harassment. This could include compensation for both past and future loss of earnings, injury to feelings and personal injury and therefore could amount to a significant sum, especially as there is no cap on compensation for sexual harassment. For example, if the amount of compensation awarded for sexual harassment was £100k, the Tribunal could award up to £25k additional compensation in respect of breaching the new duty. There is no cap on compensation.

The consultation closes on 6 August 2024. Responses can be submitted [HERE](#).

In the meantime, employers should start taking steps now to prepare for October including:

## **Audit the workplace to identify any potential hot spots or problem areas:**

Conduct an audit to gather information and statistics about previous incidents to understand the “as is” and determine what actions and preventative steps may reasonably be required. Also consider looking at attrition rates and exit interviews to see if this sets off any alarm bells (i.e., high attrition of female staff in one area of the organisation).

## **Take a temperature check amongst staff:**

It is not usual for incidents of sexual harassment to go unreported. Therefore, consider conducting an anonymous staff survey to gain a clearer picture.

## **Conduct a risk assessment**

Both of the above steps should be helpful to inform a risk assessment (which could itself be a reasonable step) and help the organisation to identify steps they need to take to mitigate risk.

## **Review and refresh existing policies**

Review and update your existing policies so that expectations of your staff and any third parties who they may come into contact with (agency staff, contractors, clients, customers, supplier, the general public etc) are clear.

## **Communication**

Communicate the organisation’s stance on sexual harassment, including by third parties, so that it is clear that it will not tolerate sexual harassment in the workplace and the consequences of such conduct. This could be done by email, notices displayed in prominent places in the workplace (toilets, canteen, reception etc)

## **Roll out and/or refresh training to prevent sexual harassment**

All employees should be required to take meaningful, good quality training on a regular basis to keep it live. Attendance records should be kept as well as a record of the content of the training.

## **Monitoring and reporting**

Consider who in your organisation will be responsible for monitoring, evaluating and reporting on the measures that you have in place to eliminate sexual harassment in the workplace. This will also help to identify any further steps that have not yet been taken so that they can be implemented and that there is someone who has accountability for this.

## **Encourage employees to report sexual harassment by staff and third parties**

Communicate the avenues that sexual harassment can be reported and the steps that the organisation will take to deal with any instances. Also, as part of your training give employees the skills and confidence to call it out in a constructive way (especially managers).

# Actions not words

Live and breathe your policies/training and make sure that behaviours are in line with them. It is pointless having a policy saying that you expect people to behave in a respectful manner if this doesn't happen in practice and/or is not dealt with appropriately when it does occur.

## Key contacts



**Claire Rosney**

Professional Development Lawyer

[claire.rosney@brownejacobson.com](mailto:claire.rosney@brownejacobson.com)

+44 (0)3300452768



**Raymond Silverstein**

Partner

[raymond.silverstein@brownejacobson.com](mailto:raymond.silverstein@brownejacobson.com)

+44 (0)207 337 1021

---

## Related expertise

Criminal compliance and regulatory

Employment

Health and safety