


Third Party Harassment – haven't we been here before?

03 May 2023  James Tait

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The Worker Protection (Amendment of Equality Act 2010) Bill is currently making its way through parliament and is expected to become law in 2024.

The Bill will amend the Equality Act 2010 by holding employers liable for harassment of employees by third parties, such as a customer or client, in circumstances where the employer has failed to take all reasonable steps to prevent that harassment. If you are thinking this sounds familiar, this is because third party harassment previously existed under section 40 of the Equality Act before being repealed on 1 October 2013. Under the previous rules, employers were liable for third party harassment where they:

- Failed to take reasonable steps to prevent it; and
- Knew that the employee had been harassed in the course of their employment on at least two other occasions by a third party (who could be a different person on each occasion).

However, under the new rules there is no requirement for the harassment to have occurred on at least two previous occasions, a one-off act will now be sufficient (making it consistent with the rules on harassment by colleagues).

In addition, other than in cases of sexual harassment, an employer will not be taken to have failed to take all reasonable steps to prevent harassment where the harassment involves a conversation in which:

- the claimant is not a participant (or a speech which is not aimed specifically at the claimant);
- the conversation (or speech) contains the expression of an opinion on a political, moral, religious or social matter;
- the opinion expressed is not indecent or grossly offensive; and
- the harassment is not intentional.

Under the new provisions, employers will also be under a new duty to take all reasonable steps to prevent sexual harassment of their employees in the course of their employment. Breach of this duty may be enforced by the Equality and Human Rights Commission and, where a claim for sexual harassment has been upheld, by an employment tribunal. Tribunals will also have a power to order an uplift in compensation of up to 25% where a claim of sexual harassment is successful, and it is satisfied that the employer breached the duty to take reasonable steps to prevent it.

In light of the above, we consider what employers can do to minimise the risks of third-party harassment, which organisations could consider adopting as part of their commitment to DE&I regardless of whether the Bill becomes law or not.

- **Policy** – update your existing policies so that they make provision for third party harassment so that expectations of both your own staff and third parties are clear.
- **Communication** – communicate your stance on third party harassment to any organisations/individuals you work with so that they are clear that you will not tolerate harassment towards your staff and the consequences of doing so. This could be done by sharing your policy with third parties, having a policy statement as part of your site signing in process and signage around the workplace.
- **Commitment** – require express undertakings from those organisations you work with on the steps you expect them to take to prevent third party harassment of your staff and make this part of your commercial agreements/procurement processes.

- **Consequences** – make third parties aware of the consequences of any breach (for example, being prohibited from coming on to site/your staff no longer attending their site and potential termination of commercial agreements).
- **Actions not words** – live and breathe your policies 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.

By taking these steps not only will you hopefully stay on the right side of any changes should they become law, but you will foster a more positive and inclusive workplace where all staff and third parties coming onto site feel valued and respected.

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