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Asylum seekers

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January
2024

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Universities and AI
The digital divide
Phishing





New duty to prevent SEXUAL HARASSMENT at work

The Worker Protection (Amendment of Equality Act 2010) Act 2023 mandates employers to prevent sexual harassment in the workplace.

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The *Worker Protection (Amendment of Equality Act 2010) Act 2023* (the *Act*) received Royal Assent on 26 October 2023. The *Act* extends to England, Wales and Scotland and will come into force one year after the day on which it was passed, on 27 October 2024.

It introduces a new statutory duty on employers to take reasonable steps to prevent sexual harassment of their employees. If employers fail to do so, the Equality and Human Right Commission (the Commission) can take enforcement steps, and any successful tribunal claim will be subject to a compensation uplift of up to 25%.

Background

The UK Government announced its plans to tackle sexual harassment in the workplace in December 2018. This included the introduction of a new statutory *Code of Practice*, increasing the awareness of the problem among employers, and gathering relevant data.

Research undertaken by the Commission suggested that, despite existing protections, workplace sexual harassment remains widespread, underreported and poorly addressed¹.

The Commission highlighted the lack of redress for victims of workplace sexual harassment and recommended that the Government introduce a mandatory duty on employers. The *Bill* was therefore proposed to strengthen existing protections against workplace sexual harassment.

Worker Protection (Amendment of Equality Act 2010) Act 2023

The Act amends the existing *Equality Act 2010* by:

- 1** Introducing a duty on employers to take reasonable steps to prevent workplace sexual harassment of their employees.
- 2** Giving employment tribunals the power to uplift sexual harassment compensation by up to 25% where an employer is found to have breached the new duty to prevent sexual harassment.

This new duty only applies to sexual harassment claims and cannot be brought as a free-standing claim. There must be a claim for sexual harassment in addition to the claim for a breach of the new duty. For example, a person bringing a claim must have an existing claim for



24%

In 2020 almost a quarter (24%) of employees thought that challenging issues like bullying and harassment are swept under the carpet in their organisation⁵.

reasonable steps' to prevent sexual harassment. The wording mirrored the existing wording in the *Equality Act 2010* to take 'all reasonable steps' to prevent harassment and discrimination. As a result of amendments made at Lords committee stage, this duty was changed to take 'reasonable steps'. The removal of the word 'all' has the effect of making the duty broader, but it is not clear what effect this will have in practice. It is expected that guidance will be issued.

The *Act* faces criticism for being 'watered down' as it was envisaged that it would reintroduce a duty on employers to protect their employees from third-party harassment in the workplace. Third-party harassment is where employees are harassed by someone who is not

part of the employer's workforce, such as clients, customers or members of the public. This clause was removed entirely from the *Act* and it remains that generally employers have no liability for harassment of their staff by third-parties.

The amended duty is a positive obligation on the employer to take reasonable steps to prevent sexual harassment.

sexual harassment. If they consider the employer has failed to take reasonable steps, they can add on the claim for the breach of the new duty which may result in a potential uplift of compensation.

The *Equality Act 2010* already protects employees and workers against sexual harassment in the workplace. The amended duty is a positive obligation on the employer to take reasonable steps to prevent sexual harassment.

As the *Bill* made its way through Parliament, it initially included a requirement that employers are to take 'all

A 2023 poll from the Trade Union Congress revealed that three in five women have experienced harassment at work, which rises to almost two in three women aged 25 to 34⁴. The majority of people who had been sexually harassed were women, with the most common perpetrator being a senior colleague.

require more sexual harassment prevention from employers. Employers who have not taken reasonable steps to prevent sexual harassment could be penalised by an increase in compensation of up to 25%. This uplift would apply to all compensation that is awarded for any type of harassment, not just sexual harassment. This will, of course, lead to higher awards and employers should take it very seriously.

The law comes into force in autumn 2024, providing time for employers to prepare. Although there is no requirement to replace policies, existing policies should be robust to counter any potential sexual harassment. A strong policy should clearly set out what constitutes sexual harassment, the mechanisms for reporting this, and the consequences for violating any policy.

It would also be sensible for employers to review policies and procedures to ensure they are up-to-date ➤

Impact

We expect the courts will



and consider if changes and further training of the workforce is required. Any training should cover how employees can identify and prevent sexual harassment. Training on the process to report concerns should also be available.

Employers should consider workplace issues from a cultural perspective, and explore whether any issues can be identified, addressed and actioned. For example, looking at how a business could be more diverse by adopting more inclusive language and have a zero-tolerance policy for any form of harassment or discrimination.

The Commission intends to produce a statutory *Code of Practice* to support employers to comply with the new duty, drawing on the existing guidance on sexual harassment and harassment at work². This will need to set out the steps that employers should take to prevent and respond to sexual harassment to comply with the duty. A method will also be required for employees and employee representatives to report breaches of the preventative duty so that action can be taken to ensure compliance, including enforcement activity where appropriate.

The Commission's current guidance suggests that all employers are expected to have an anti-harassment policy that is communicated to workers and is effectively implemented, monitored and reviewed³. It is not enough to have the policies in place, employers must ensure they are being properly implemented.

What to do before 26 October 2024

Employers should begin to prepare for the change in law and consider the following steps:

- Make it clear you have a zero-tolerance policy on sexual harassment. Sexual harassment is defined as any unwanted conduct of a sexual nature.
- Review anti-harassment policies and procedures. Do your policies and staff handbook need updating?
- The policy should cover all workplaces and all workers in the organisation, regardless of employment relationship.

- Review how sexual harassment complaints are dealt with and ensure the investigation process is set out in detail.
- Consider if there are any specific measures in certain roles or circumstances to protect employees.
- Offer training to staff.
- Ensure employees are aware of the policies. Mount a communications campaign before 26 October, with



Existing sexual harassment policies should be robust.

follow up reminders after implementation.

- Ensure new joiners are aware of the policies in staff inductions and reinforce policies at staff meetings.
- Ensure there are reporting channels for staff who wish to report harassment.
- Conduct anonymous staff surveys to evaluate harassment in the workplace.
- Provide information to employees about support, counselling and advice services.

Time will tell whether the Act will generate more claims. It certainly creates a risk that employees will be given higher awards if the duty is breached. Employers will need to be

proactive to ensure they are complying with the duty and carefully consider the *Code of Practice* once available. ●

References

- ¹*Worker Protection (Amendment of Equality Act 2010) Bill* Commons Committee Stage, Equality and Human Rights Committee
- ²*Worker Protection (Amendment of Equality Act 2010) Bill* Lords Second Reading, Equality and Human Rights Committee
- ³Sexual harassment and harassment at work: technical guidance, Equality and Human Rights Commission
- ⁴New TUC poll: 2 in 3 young women have experienced sexual harassment, bullying or verbal abuse at work, Trade Union Congress
- ⁵Managing conflict in the workplace, Chartered Institute for Personnel and Development

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