



The new duty to prevent sexual harassment

What does this mean for employers?

A new proactive duty on employers to take reasonable steps to prevent sexual harassment will come into force on 26 October via [The Worker Protection \(Amendment of Equality Act\) Act 2023](#) (the **Act**). The Act adds a new section 40A to the Equality Act 2010, introducing a positive obligation on employers to take “reasonable steps” to prevent sexual harassment of their employees in the course of their employment.

What is the current position?

Currently, employers are vicariously liable for sexual harassment committed by their staff in the course of employment unless they show that they took “all reasonable steps” to prevent the harassment from occurring. Tribunals are often reluctant to accept that employers have satisfied the “all reasonable steps” defence. The new Act introduces a positive obligation, obliging employers to put reasonable steps in place to prevent sexual harassment of employees from arising in the first place.

Does the duty extend to third parties?

A duty to prevent sexual harassment by third parties was removed from the Bill in October 2023, so employers are not presently liable for harassment by third parties. However, the ECHR’s [guidance](#) on the new duty includes a duty to prevent sexual harassment by third parties such as customers, clients and friends and family of colleagues. Further, Labour’s [Plan to Make Work Pay](#) (part of its manifesto on Employment Law reform) pledges to ensure that workplaces are free from harassment, including by third parties (read more about Labour’s Plan to Make Work Pay in our [previous edition](#) of ML covered). It therefore remains to be seen whether further secondary legislation will re-introduce the third-party duty.

Contacts



Charlotte Reid
Senior Associate
+44 20 3060 6157 (UK)
charlotte.reid@rpc.co.uk



Kim Wright
Senior Associate
Practice area
+44 20 3060 6759 (UK)
kim.wright@rpc.co.uk

Practical steps for compliance

Employers will need to show that they have reasonable steps in place to prevent sexual harassment. Whether or not an employer has taken reasonable steps is an objective test and will depend on the facts and circumstances of each situation. However, there are a number of general steps that companies should take in preparation for the new duty:

1. carrying out enhanced training tailored to reflect different job roles and risk assessments on sexual harassment
2. updating and reviewing the company's current policy on sexual harassment and creating a standalone policy on the topic
3. creating an independent reporting line for incidents of sexual harassment
4. keeping a thorough record of steps taken to prevent sexual harassment, which is regularly reviewed, and
5. circulating anonymous surveys to better understand the protection required from staff.

Consequences of non-compliance

If the employment tribunal is satisfied that the preventative duty has been breached, it may order the employer to pay additional compensation to the worker (a **compensation uplift**) of up to 25% of an award of compensation. The Equality and Human Rights Commission (**EHRC**) can also take enforcement action against employers in breach of the new duty.

Contact us now to ensure you are ready for 26 October 2024 and won't be in breach.