

New duty: 26th October 2024 – Prevention of Sexual Harassment in the workplace

Introduction

The Worker Protection Act (amendment of Equality Act 2010) came into force on 26 October 2024 and will change the duty on employers from redress to prevention. This means all employers will be required to take proactive steps to prevent sexual harassment (it amends the Equality Act 2010, s40A).

The Equality Act 2010 defines sexual harassment as unwanted conduct of a sexual nature which has the purpose or effect of violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

The change is called the preventative duty. If employers do not comply with it, they are breaking the law. The preventative duty is designed to improve workplace cultures by requiring employers to anticipate how sexual harassment might happen in their workplace and take proactive reasonable steps to prevent it happening.

The preventative duty includes worker-on-worker harassment and harassment by third parties such as customers, clients or patients.

If an employer fails to take reasonable steps, the Equality and Human Rights Commission can take enforcement action. Employers also risk an employment tribunal increasing the amount of compensation if an individual's claim of sexual harassment is successful.

The law does not list specific steps an employer must take. Different employers may seek to prevent sexual harassment in different ways, but all employers must take action and no employer is exempt from the sexual harassment preventative duty.

The practical steps below illustrate the types of action employers can take to prevent and deal with sexual harassment in the workplace. These steps are not an exhaustive list, but implementing these steps should help you take positive action to prevent and deal with sexual harassment at work.

These practical steps have been put together by us to be as straightforward as possible as a package so that small employers and organisations can comply with this duty without making it too complicated.

Step 1: develop an effective anti-harassment policy (Policy attached)

An employer should have policies to deal with sexual harassment and other forms of harassment, or a single policy covering both. The Policy attached covers Anti-harassment as a general topic with sexual harassment highlighted within it. This is generally considered easier for employers to have an anti-harassment policy which then is in addition to the Equal Opportunities Policy.

A good policy should:

- specify who is protected
- state that sexual harassment will not be tolerated and is unlawful
- state that the law requires employers to take reasonable steps to prevent sexual harassment of their workers
- state that harassment or victimisation may lead to disciplinary action up to and including dismissal
- state that aggravating factors, such as abuse of power over a more junior colleague, will be taken into account in deciding what disciplinary action to take
- define sexual harassment and provide clear examples of it. Examples should be relevant to your working environment and reflect the diverse range of people that harassment may affect
- include an effective procedure for receiving and responding to complaints of harassment
- address third-party harassment (such as by customers or service users)

The section addressing third party harassment should explain clearly:

- that the law requires employers to take reasonable steps to prevent sexual harassment by third parties;

- that while an individual cannot bring a claim for third-party harassment alone, it can still result in legal liability when raised in other types of claims;
- that it will not be tolerated;
- that workers are encouraged to report it;
- what steps will be taken to prevent it;
- what steps will be taken to remedy a complaint and prevent it from happening again, for example, warning a customer about their behaviour, banning a customer, reporting any criminal acts to the police or sharing information with other branches of the business.

The overall policy should also:

- include a commitment to review the policy at regular intervals, monitor its effectiveness and implement any changes that may be required
- cover all areas of the business including any overseas sites, subject to any applicable local laws

Step 2: engage your staff

- Conduct regular 1-2-1s with managers and staff in an open discussion to allow staff to talk about any areas that worry them.
- Conduct exit interviews with managers and HR so that employees who leave feel it is safe to talk about the reason they left..
- Ensure you have an open-door workplace culture
- Consider having internal staff surveys – these can be anonymous as this may gather more information.

You should use these to help you understand where any potential issues lie and whether the steps you are taking are working.

Make sure that all workers are aware of:

- ensure your staff know and understand the new Policy;
- how they can report sexual harassment;

- the consequences of breaching the policy.

Often the best way is to be open about the new policy perhaps using team meetings to explain that there is an obligation on employers to prevent sexual harassment in the workplace which is effective from the 26th October 2024, when the law comes in.

As a result, the Company has come up with a new Anti-harassment policy which is there to allow staff to recognise and report any concerns internally or with third parties (customers and suppliers). The Company wants to ensure we have a culture of openness to be able to report any worries in a safe working environment. Then perhaps give them a copy of the new policy and ask that they read it at the team meeting.

A discussion about the new policy is useful – often staff may not say very much. The team leader could ask anyone to come up with ideas where perhaps they may have overheard anything which makes them feel uncomfortable with say third party suppliers, customers or patients. Sometimes this starts a discussion with another member of the team saying they have also heard this. Or perhaps they can look at scenarios where there may be risks they can foresee – such as working alone later in the evening.

If there is no discussion, then it is now worth asking your managers when they do one to ones or informal reviews to add this point to their list of questions to check in with the employee on an individual basis just in case there is anything that they are worried about. It is best not to do this at an appraisal but save it for informal one to one type meetings.

As part of this discussion, it is good to explain clearly to all workers and highlight in the policy:

- what is considered unacceptable behaviour;
- how to recognise sexual harassment;
- what to do if they experience or witness it.

The policy does have some examples of behaviour that is unacceptable.

It might be worth also getting them to sign at the bottom of the policy that they have received it and understand it.

Step 3: assess and take steps to reduce risk in your workplace (a Risk Assessment is attached to work through)

Undertaking a risk assessment will help you comply with the preventative duty. When doing a risk assessment, consider factors that might increase the likelihood of sexual harassment and the steps that can be taken to minimise them.

For example:

- Where are the power imbalances?
- Is there a lack of diversity in your workforce?
- Is there job insecurity for a particular group or role?
- Are staff working alone or at night?
- Do your staff have customer-facing duties?
- Are customers or staff drinking alcohol?
- Are staff expected to attend external events, conferences or training?
- Do staff socialise outside of work?
- Do staff engage in crude or disrespectful behaviour at work?

Step 4: reporting

Consider using a reporting system (such as an online or independent HR consultant if they are uncomfortable talking to internal HR or manager) that allows workers to raise an issue either anonymously or in name.

Keep centralised, confidential records of all concerns raised, formal and informal. This enables trends to be identified.

Step 5: Review of policy / discussion in teams / training

Workers, including managers and senior staff, should be comfortable to recognise:

- what sexual harassment in the workplace looks like;
- what to do if they experience or witness it;
- how to handle any complaints of harassment.

It would be worthwhile getting the managers together to talk through the new Policy and discuss whether any of them have heard or seen examples either in the workplace or third-party suppliers customers or patients.

This is a useful time to perhaps review the risk assessment form together (or one person drafts it) and then allows a discussion with the managers on the form to tailor it more specifically to the managers experience in the workplace.

This is when a plan needs to be put in place on how to handle a complaint if one comes in or review if there have been complaints in the past and how it was handled.

It is vital to foster a culture of openness at this meeting to allow anyone to speak and discuss situations where there may be risk and how to identify and prevent this. Also, there may be particular individuals in the workplace that managers feel may be a possible risk and how to deal with this.

Where third-party harassment from customers or patients is more likely, workers should also be given tools on how to address these issues if they find themselves in that situation.

Step 6: what to do when a harassment complaint is made

Act immediately to resolve the complaint, taking into account how the worker wants it to be resolved.

Respect the confidentiality of all parties.

Protect the complainant from ongoing harassment or being victimised during an investigation or complaint. For example, move the alleged harasser to another team or site. You should also protect witnesses to the sexual harassment. Decide how you will discuss / approach the third party if this is the case – either a supplier or customer.

If a worker makes a complaint of harassment that may be a criminal offence, you should speak to the individual about whether they want to report the matter to the police and support them with this if they go ahead.

Always communicate the outcome of the complaint and outline any appeals process to the complainant in a timely manner.

Harassment by a third party, such as a customer, client, patient or supplier, should be treated just as seriously as that by a colleague. The Company will need to decide how to deal with a customer or third-party supplier if this happens. It is good to have a consistent approach that is agreed by the management team on what steps to take.

Employers should take steps to prevent this type of harassment, including putting reporting mechanisms in place or assessing high-risk workplaces where staff might be left alone with customers.

Step 7: monitor and evaluate your actions

It is important to regularly evaluate the effectiveness of the steps you put in place to prevent sexual harassment in your workplace and implement any changes arising from that. This will help you comply with the preventative duty and protect your staff from sexual harassment.

You could evaluate the effectiveness of the steps you have taken by:

- reviewing informal and formal complaints data to see if there are any trends or particular issues and appropriate actions
- surveying staff anonymously on their experiences of sexual harassment, including whether they have witnessed or been subjected to harassment, whether they have or would in the future report it (and if not, why not) and what further steps they think you could take
- comparing reported complaints with survey feedback to ensure you have an accurate reflection of the level of sexual harassment in your workplace, and take appropriate actions
- hold lessons-learned sessions after any complaints of sexual harassment are resolved

You should also review policies, procedures and training/follow ups regularly. It is important to seek input from workers to consider whether any changes are needed. These changes should then be implemented, where appropriate.

You should also consider whether there have been any changes in the workplace or workforce that mean there are further steps that would now be reasonable for you to take.

Make sure you review your risk assessment, policy and managers / team discussions. Don't just think you can do this exercise once and that ticks the box for the employer's obligation.

If a claim is lodge, a Tribunal will want to see that you have reviewed this process – ie your senior management team have reviewed the risk assessment form / policy in a management meeting to check if any changes should be made, the managers should do the same and agenda this topic with staff at least at every year to check if they have any suggestions to make and understand it again.