

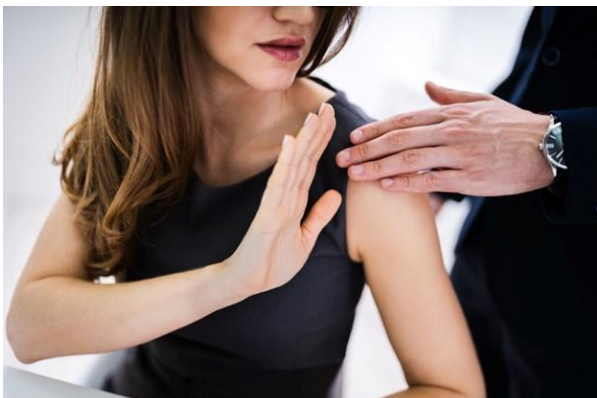
New Duty to Prevent Sexual Harassment in the Workplace

October 26th heralds the implementation of the Government's Worker Protection Act and as part of this employer's will be required to take a proactive approach to preventing sexual harassment in the workplace.

The act outlines the responsibilities that employers must uphold in taking reasonable steps to prevent instances of sexual harassment occurring, not just in their premises but outside of the workplace as well during things like training days etc.

The Equality and Human Rights Commission (EHRC) has amended their guidelines to reflect the new preventative duties that employers are obligated to uphold.

Contact Croner today and talk to one of our expert HR and Employment Law advisors, to ensure your business remains compliant with the latest legislation. Call [0844 561 8133](tel:0844 561 8133).



What does the new duty to prevent sexual harassment entail?

Under the Equality Act 2010, sexual harassment is prohibited already. This includes all conduct that is unwanted and of a sexual nature, regardless of the intention to cause distress.

If the effect of the conduct includes violating the dignity of the recipient, or creating an humiliating, degrading, hostile, intimidating or offensive environment, then it is considered sexual harassment.

Under the new rules liability can be held against employers vicariously, even if they are unaware of the conduct, however they can defend against this as long as they can show that they took all reasonable steps to prevent harassment.

The new act brings in mandatory legal duties for employers, as opposed to the previous encouragement to take preventative measures like training, there is now a legal responsibility for employers to proactively prevent sexual harassment at work by taking "reasonable" preventative measures.

In addition to the new responsibilities for employers, the Act now gives the EHRC powers to enforce the duties placed on employers, as well as:

- Investigate breaches and potential breaches.
- Require employers to prepare an action plan to amend and prevent future breaches by serving notices.
- Require employers to be legally bound by agreements to take steps to address issues

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- regarding discrimination or harassment.
- Restrain employers from committing unlawful acts by seeking injunctions

What are the steps employers should be taking now?

There are several considerations employers can take to practically show that they have actively taken steps to prevent sexual harassment in the working environment.



Educating staff

Refer employees to the Equality Act 2010 definition, and use examples to showcase unwanted conduct. Employers should also outline to workers how to avoid committing such conduct.

Create an inclusive workplace culture and environment

Developing an inclusive workplace culture is key to tackling sexual harassment in the workplace. As an employer outlining a zero-tolerance approach to sexual harassment, sets the precedence of what will and will not be accepted in the workplace.

In order to create an inclusive culture, employers should first look at the prevailing dynamic in the workplace, for instance, are there any power dynamics that could potentially be problematic, and what preventative measures could be implemented to mitigate this? Leadership should lead by example in order to help create this culture and should be visible role models for all other staff, in creating a positive working environment for all.

Implement regular training

All staff should also undergo regular training to be able to effectively recognise instances of sexual harassment. Training should be in line with the guidance, which recommends the training be tailored for the nature of the employer as well as the intended audience. This also includes addressing third party harassment, where there is a risk of this.

Note: Be sure to keep accurate records on who has received training and ensure that it is refreshed regularly.

Develop workplace policy that is effectively anti-sexual harassment

Employers should review their current policy, contracts and procedures to ensure compliance with the new duty and make amendments where necessary.

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When devising policy, it should clearly outline who is protected, state that sexual harassment is unlawful and will not be tolerated and also state that harassment may lead to disciplinary action, that could lead to and include dismissal.

Conduct a risk assessment

Identifying the risks of sexual harassment in the workplace can be achieved by conducting regular risk assessments, this could include the use of staff surveys, records of complaints, and exit interviews etc. Employers should consider that they should also consider the risk of harassment from third parties in these risk assessments. Third parties can include (But is not limited to) customers, clients and visitors. Employers should also consider staff dynamics and potential power imbalances.

Ensure clear methods for reporting sexual harassment

The channels of communication for employees reporting sexual harassment to management, should be made clear. The complaint handling process should ensure that all complaints are handled properly. Anyone internal or external who is a point of contact to deal with claims must be appropriate to support the claimant and have been trained to provide appropriate support.

Consequences of non-compliance with the new duty to prevent sexual harassment

Failure to comply with the new duty can land employers in hot water, legally, financially and reputationally.

Compensation

A successful claim against your business can result in a compensation payout to the affected employee. If the preventative duty has been breached (in the ruling of an employment tribunal) then it can order an uplift in the amount of compensation to be paid by up to a maximum of 25% (the actual uplift amount is dependent on how much the employer has been shown to be in breach of the duty).

EHRC enforcement action

The EHRC has powers to take action against employers, including investigations and issuing unlawful act notices. They can also enter into legally binding agreements with companies to prevent further unlawful acts

Need advice on the new legislation?

The expert advisors at Croner are on hand to help ensure that your business is compliant with the new legislation, including helping set up policy and implement training for staff.

Call today on [0844 561 8133](tel:0844 561 8133) and get help with all of your organisation's HR, Employment Law and Health and Safety needs.

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