

New Legal Obligation for Employers:

The duty to prevent sexual harassment

(with effect from 26 October 2024)

A Brief Guide

Overview

If an employee is successful in a claim for harassment (in relation to any protected characteristic), which involved sexual harassment in the course of employment, an Employment Tribunal is duty-bound to consider awarding the Claimant compensation uplifted by up to 25%.

An employer will not breach its duties nor expose itself to increased financial risk if it has taken **reasonable steps to prevent the sexual harassment of employees.**

It is likely that the law will be interpreted to include the protection of sexual harassment by third parties.

Note

The underlying claim, to which this obligation attaches, does not have to be for sexual harassment.

The underlying claim will have been brought within time, usually within three months. If that claim is not for sexual harassment but it is alleged that sexual harassment was involved somehow, the risk has increased. However, the sexual harassment referred to does not, however, have to have happened within the last three months.

There is no cap on compensatory awards for discrimination (and harassment is a form of discrimination), therefore a 25% uplift in any award could be punitive.

Examples

At a work party Employee A drinks too much and makes a racist comment to Employee B while doing something alleged to be sexual harassment of Employee C.

Employee B sues the Employer for racial harassment.

Employee C sues the Employer for sexual harassment.

Assume both claims are successful and that the employer was found to be vicariously liable for Employee A's actions (having been unable to show that it took ALL reasonable step to prevent steps to those actions from happening).

As well as being at risk of having to pay a higher award of compensation to Employee C, the Employer also has the same risk vis-à-vis Employee B.

Employee B might allege that the racial harassment involved sexual harassment of Employee C. Whether or not that will be the case will depend on the circumstances but if the Tribunal agrees, it will consider increasing the award for racial harassment if the Employer could not show that it had taken reasonable steps "to prevent sexual harassment".

Another example might be if an employee considered herself to be the victim of sexual harassment in January, brought a grievance in February, the outcome of which (rejecting the grievance) was delivered in March - which was appealed in April (by which time any claim for sexual harassment would be out of time).

The employee is also pregnant and now very upset by the rejection of her appeal to which the Employer makes a comment about her being overly hormonal and emotional. The comment entitles the Employee to bring a claim for harassment on the grounds of pregnancy but which involved sexual harassment (ie the event in January that was the subject of the grievance). Unless the Employer can show that it took reasonable steps to prevent sexual harassment, it is likely to have to pay up to 25% more to the employee if her claim is successful.

From 26 October 2024, Employers **must** take REASONABLE STEPS to prevent sexual harassment.

But what are suggested reasonable steps?

- Consult with recognised Unions, staff consultation bodies or with staff generally to try to identify the risks staff indicate need addressing.
 - Consider using a staff survey to enquire if employees consider their risk of sexual harassment at work to be high, medium or low and to justify their response.
- Studies have shown that most incidents of sexual harassment go unreported so ensure that staff know how to report sexual harassment and give reassurance that the employer wants to hear about incidents so that it can address the risks and problems caused by it, as well as looking after the welfare of staff.
 - Consider having an identified, suitably trained or experienced person (or email address etc) to whom such reports are made.
- Ensure policies are up to date and include statements of zero tolerance.
- Ensure policies are reviewed regularly and revised when necessary.
- Ensure policies are relevant, read by staff and reflect the actual behaviours and standards. If behaviours and/or standards fall short of what is required ensure action is taken to address problems.
- Include appropriate information or training during the induction of all staff.
- Provide training to managers and annual refresher training.
- Assess the risks of sexual harassment especially in respect of exposure to third parties.
 - Consider particular higher risk situations eg lone working staff engaging with 'high risk' customers or service users, secondment arrangements or young or vulnerable members of staff.
- Seek advice at any time from the employment team at Thompson Smith and Puxon by contacting enquiries@tsplegal.com

Contact Us

For legal advice for you or your business, please contact our specialist team.



Jolyon Berry

Director, Solicitor

Head of Employment

+44 (0)1206 217034

jolyon.berry@tsplegal.com

Offices

Colchester Office

Stable 6, Stable Road
Colchester
Essex CO2 7GL

Tel: +44 (0)1206 574431
Fax: +44 (0)1206 563174
Email: info@tsplegal.com

Clacton Office

39 Station Road
Clacton on Sea
Essex CO15 1RN

Tel: +44 (0)1255 221919
Fax: +44 (0)1255 220240
Email: info@tsplegal.com

Stay Connected



tsplegal.com

