

What guidance is there for employers on complying with the new duty to prevent sexual harassment at work?

The mandatory duty on employers to take reasonable steps to prevent sexual harassment at work came into force on 26 October 2024. New and updated guidance for employers has recently been published covering both the scope of the new duty and how to manage compliance. In this briefing, we round up the key points of interest.

EHRC's sexual harassment and harassment at work

The EHRC has updated its detailed technical guidance on [Sexual Harassment and Harassment at Work](#) (the **Guidance**) to reflect the new duty to prevent sexual harassment at work. It is important to note that the Guidance is just that – it does not have the status of a “Statutory Code”. This means that Employment Tribunals are not obliged to take it into account. That said, it may still be used as evidence in legal proceedings. For that reason, employers would be wise to apply the recommendations in the Guidance as far as possible.

It is worth reading the Guidance in full, but here is our quick guide to the key points to note from the new sections of the Guidance:

- **The scope and nature of the duty:** the Guidance explains that all employers now have a positive duty to take reasonable steps to prevent sexual harassment at work perpetrated by co-workers and third parties. The Guidance underlines that this duty is anticipatory, and employers must not wait until a complaint of sexual harassment is made before taking action. Rather, employers must predict scenarios where workers could experience sexual harassment at work and take reasonable steps to prevent it from happening (see 3.16 – 3.18, 3.21 – 3.26, 3.28 and 4.6).
- **The special role of managers and senior leaders:** the Guidance stresses that managers and senior leaders play a critical role in creating respectful workplaces. They are expected to model good behaviour, promote positive and inclusive workplaces and take instances of harassment seriously (see 4.3).
- **Accounting for third parties:** the Guidance explains that *all* types of third parties are relevant to the duty including, for example, customers, clients, contractors and members of the public. When conducting a risk assessment, employers are expected to build in consideration of the risks that workers might be sexually harassed by third parties (see 3.33 – 3.34 and 3.85 – 3.86).

- **Assessing risk in your business:** the Guidance says that employers should conduct risk assessments of policies, procedures and working practices. Indeed, it is said that employers are unlikely to comply with the duty without having conducted a risk assessment. Numerous examples of possible risk factors are given, such as lone and out of hours working, power imbalances and the presence of alcohol. Once the risks have been identified, employers must consider what possible steps could be taken to remove or reduce them and an action plan produced (see 3.27 – 3.31 and 4.10 – 4.15).

- **Taking reasonable steps:** the Guidance highlights that there is no “one-size-fits-all” and what is reasonable will vary from employer to employer. However, whether or not a step is reasonable will be assessed against an objective standard, rather than just by what the employer thinks. The Guidance sets out a non-exhaustive list of factors which are relevant to reasonableness, including things like the size and resources of the employer, the working environment, the sector the employer operates in, the level of risk present in the workplace, the degree of contact with third parties and the time, cost and benefit of implementing the step weighed against the benefit it could achieve. Examples of steps that are likely to be considered reasonable for most employers are also given, including maintaining effective anti-harassment policies and procedures, delivering training to staff and having measures in place for detecting harassment (see 3.32 and 4.16 – 4.41).

- **Penalties for non-compliance:** the Guidance sets out the penalties for failing to comply with the new duty, namely that the EHRC may take different types of enforcement action against the employer, and/or that an Employment Tribunal may uplift compensation by up to 25% in a relevant harassment claim. The amount of any uplift will correspond to the severity of the employer's breach. It is also made clear that workers cannot bring standalone claims in the Employment Tribunal for breach of the preventative duty (see 3.19-3.20, 3.36-3.43 and 3.45).

EHRC's employer 8-step guide: preventing sexual harassment at work

To complement the detailed Guidance, the EHRC has also published a more user-friendly [8-step guide for employers](#) which sets out the steps that will be expected from most employers. These steps should not be viewed as exhaustive, but the EHRC says that implementing them will help employers to discharge the duty. The eight steps are:

- **Step 1 – Develop an effective anti-harassment policy:** the guide sets out in detail what a good policy should contain, including in relation to harassment by third parties. The policy should apply to all areas of the business and be reviewed regularly.

- **Step 2 – Engage with your staff:** employers are encouraged to engage with workers using a variety of methods to identify where the risks lie and whether the steps taken are working. Staff should also be made aware of the anti-harassment policy and understand how it works and the consequences of breaching it.
- **Step 3 – Assess and take steps to reduce risk in your workplace (i.e. conduct a risk assessment):** as made clear in the Guidance, a risk assessment is central to compliance with the preventative duty. The risk assessment should build in a consideration of typical risk factors.
- **Step 4 – Reporting harassment:** staff should understand how to raise concerns and multiple channels for reporting should be offered, including the option to report anonymously. Centralised and confidential records of all reports should be maintained to allow trends to be spotted.
- **Step 5 – Training:** all staff should receive training on workplace sexual harassment and how to report it. Managers should also be trained on how to deal with such complaints. Training programmes should be reviewed

regularly and refresher training should also be offered at regular intervals.

- **Step 6 – What to do when a harassment complaint is made:** employers should take prompt action when a complaint is made, and the matter should be kept confidential. Other factors to consider include protecting the complainant and witnesses from harassment or victimisation and supporting the complainant to report the matter to the police in appropriate cases.
- **Step 7 – Dealing with harassment by third parties:** it is underlined that harassment by third parties should be taken just as seriously as harassment by a colleague. Employers need to build in third party risks into their risk assessments and have appropriate reporting mechanisms in place.
- **Step 8 – Monitor and evaluate your actions:** employers must keep the steps taken under review and take further preventative steps as needed. The guide sets out different ways of evaluating the steps taken including reviewing reported complaints, conducting anonymous staff surveys and reviewing policies and training regularly.

What other guidance is available?

In addition, the EHRC has published brief guidance on [three templates](#) that may be used to help employers discharge the duty. Although originally designed for employers in the hospitality sector (where the risk of sexual harassment is particularly high), the EHRC says that these templates may be adapted to suit other types of workplace. The recommended templates are:

- A **checklist of questions** designed to span what happens during the working day to assist employers spot and tackle the risks of sexual harassment within their workplace.
- An **action plan** which notes the actions points emerging from the answers to the checklist questions (as well as any additional actions that the employer considers would be reasonable to prevent sexual harassment).
- **Monitoring logs** to be used on a regular basis to track how the checklist is being used. These logs can be completed on a daily basis, with more in-depth logs completed every quarter.

Acas has also updated its [sexual harassment guidance](#) to cover the preventative duty.

For a refresher on all aspects of the duty and how to comply, you can watch BDBF's [recent webinar](#) on the topic led by Partner [Nick Wilcox](#) and Associate [Julia Gargan](#).

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.