



Navigating the New Duty to Prevent Sexual Harassment

GUIDANCE NOTE

LOCH



The Worker Protection (Amendment of Equality Act 2010) Act 2023 came into force on 26 October 2024. It is crucial that employers are up to speed with the legislative changes now in effect, and the steps they can take to ensure they are compliant.

This guidance note explores the definition of sexual harassment, key takeaways from the new legislation, and practical steps that we consider employers should be taking to not only satisfy their legal obligations, but also take a positive stand against sexual harassment in the workplace and promote a culture of diversity, equality and inclusion.

What is sexual harassment?

The first step is for an employer to understand what sexual harassment is and then educate their workforce.

‘Harassment’ is unwanted conduct related to a protected characteristic which has the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. ‘Sexual harassment’ is unwanted conduct of a sexual nature that has that effect.

Understanding the new legislation



Sexual harassment in the workplace is already prohibited under the Equality Act 2010.

The new Act, effective from 26 October 2024, introduces a duty for employers to take 'reasonable steps' to prevent sexual harassment of employees during the course of their employment, whether by colleagues or third parties - such as customers, suppliers, and members of the public.

Employers do not need to have been aware of the conduct to be held liable for harassment, if it occurs during the course of their employment.

Under the Act, where an employee has been successful in bringing a claim for sexual harassment, allegations of a breach of their duty to take reasonable steps can then be considered by an Employment Tribunal. At this point, if the employer is found to have breached their duty, the Employment Tribunal can further uplift the compensation awarded by up to 25%.

Given there is no upper limit on compensation for sexual harassment, an uplift could be quite substantial.

An employer may be able to rely on the defence that they took all reasonable steps to prevent the harassment. However, a one-size fits all approach cannot be taken, as 'reasonable steps' will vary depending on a range of factors including the employer's size, sector, and resources. Larger employers, therefore, will be expected to do more.

The new duty is an anticipatory one imposing an obligation to take steps, meaning employers should act now before any incidences of sexual harassment occur.

In organisations where sexual harassment has been found to have taken place, the preventative duty means an employer should take action to stop sexual harassment from happening again.

What should employers do?

We have set out below some practical steps which we consider employers should be taking:



Complete a risk assessment

Employers should identify and manage risks in their workplaces. An assessment could involve the use of employee surveys, complaint records, and exit interviews, as well as considering the risks from both internal and external sources.



Review Policies and Procedures

Employers should review their contracts, policies and procedures to ensure they consider the new duty and bring any changes to the attention of their staff. This includes disciplinary and grievance procedures, anti-bullying and harassment policies, social media, relationships at work and lone working policies, and also consider whether a stand-alone sexual harassment policy should be implemented.



Training

Regular training, together with the right policies, can have a significant impact. Employers should keep training records and ensure senior management sets the tone by actively participating in the training and demonstrating a zero-tolerance approach to harassment.



Reporting

Employers should provide clear and accessible channels for employees to voice their concerns, with all reports of harassment being treated seriously and investigated swiftly and impartially.



Notices

Employers could consider installing clear signage and notices to support the culture that no harassment of staff is acceptable. Employers could also remind staff ahead of any work events (especially if alcohol is going to be served) of the organisation's expectations regarding behaviour and encourage staff to report any concerns they may have.



Monitoring

In addition to taking the above steps, organisations should monitor and review the steps they have taken, progress made and any changes to the culture of the organisation as a result. Finally, employers should keep records of everything they do so that they can show to an Employment Tribunal (if necessary) that they have taken reasonable steps to prevent sexual harassment.

What can Loch do for you?



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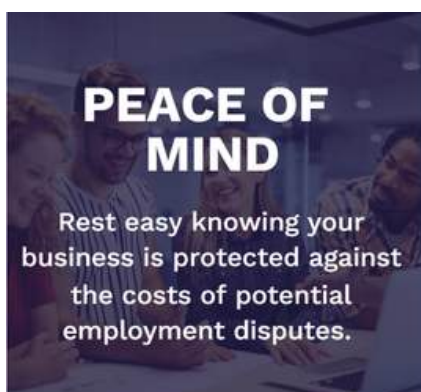
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Our integrated approach provides commercially focused, pragmatic solutions that help you when you're faced with a decision that will protect, grow, or secure your future. By covering every angle, we give you the confidence to move forward for long-term success.

Contact Us

Contact us at hello@weareloch.com or 0203 667 5400, and to receive more updates like this, visit our website www.weareloch.com and sign up to our newsletter.



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