

# The new duty to prevent sexual harassment

Employers are subject to a new duty to take reasonable steps to prevent sexual harassment at work with effect from **26 October**. This is a steep change, as employers must now proactively make efforts to address such behaviour. If a claim of sexual harassment is established, a Tribunal will have to consider as a matter of course whether the employer took suitable steps and, if not, any compensation may be increased by up to **25%**.

Between the introduction of this new duty, the publication of related guidance from the Equality and Human Rights Commission (or 'EHRC'), and the approaching wave of work-related social events as the festive period draws nearer, there has never been a more opportune time for employers to act.

In this factsheet we share five key practical ways to embrace this important change to the law.



## 1 Introduce meaningful policy

Many employers will have longstanding policies to address harassment. All too often, however, we see 'one-size-fits-all' policies which are unlikely to be sufficient to meet the new and more demanding duty.

Your policy should take into account the specific risks and challenges posed by your workforce and working environment. For example, do you have risk factors such as lone or night workers, or colleagues in significant power imbalances? The EHRC guidance lists a host of potential matters to consider, much in the same way that a health and safety assessment might be undertaken. It may be beneficial to discuss matters with colleagues, to gain a better understanding of the interactions faced by workers and employees.

Implementing thorough and accurate policies is likely to be more than a simple box-ticking exercise and having these documents available is important in ensuring that all members of the workforce understand what is expected of them when it comes to preventing sexual harassment. A well thought out and articulated policy will serve as valuable evidence that you have seriously considered your duty and taken steps to comply with it.

Generally, a well-drafted policy should not stand isolated from your other policies, and this an opportune time to review things generally to ensure that compliance with this duty permeates your culture.

## 2 Implement consistent training

Having a policy in place is a crucial first step, but making sure that staff and management alike have received – and continue to receive – training on its content is essential to stand the strongest chance of making meaningful change and demonstrating compliance with the duty.

An effective training programme should cover: what constitutes sexual harassment; how to spot it; and how to appropriately respond to instances of sexual harassment, including escalating where appropriate. We are very familiar with providing external training and welcome any queries about either introducing or delivering a suitable programme.

It is worth bearing in mind that different roles are likely to require different training. For example, senior management may need a stronger awareness of how they will conduct investigations and risk assessments, whereas training for more junior colleagues may be best focussed upon reporting procedures. Truly embedding this new approach to sexual harassment will require education throughout the workforce.



### 3 Set a framework for investigations

An investigative framework is another essential mechanism to make sure that complaints of sexual harassment are handled in a manner which is effective, sensitive and compliant with the law.

In the unfortunate circumstances where you need to investigate allegations, a robust plan and an informed group of potential investigators will be vital to ensure that matters are progressed swiftly and without confusion. Key management figures should know what their role is vis-à-vis any investigation and how to support it effectively.

Under the spotlight of this new preventative duty, where an allegation of sexual harassment requires investigation, employers should conduct investigations through a lens of both fact finding and with a view to reflecting and learning, so that future occurrences of sexual harassment can be mitigated.

### 4 Actively manage internal processes

Strong policies, effective training and a clear investigative framework will do much to meet the challenge of the new preventative duty. However, the duty is an ongoing one and treating compliance as a one-time exercise is unlikely to suffice. Workplaces are ever-changing and active management will be necessary.

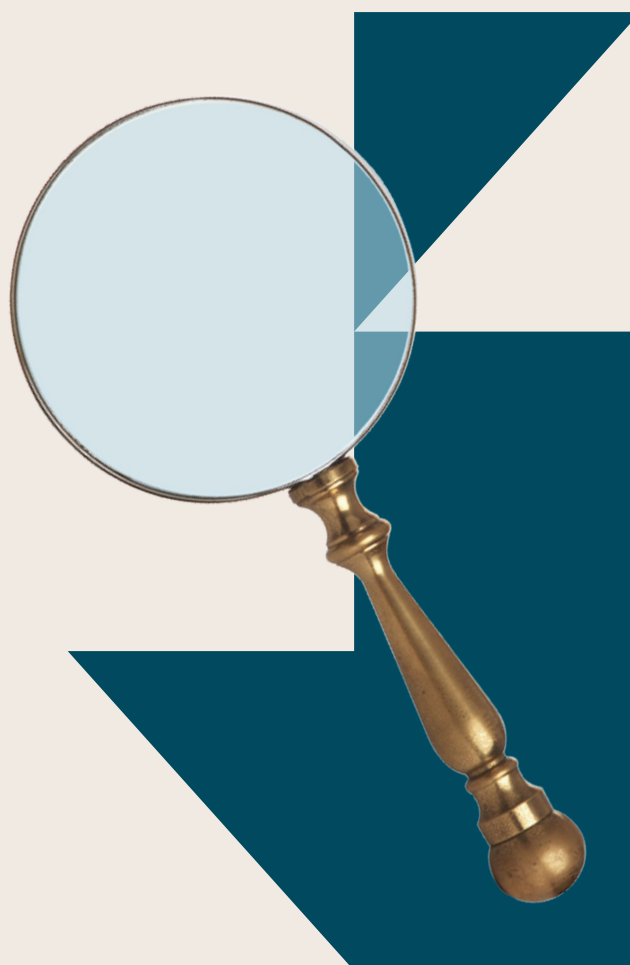
You might consider an annual review of internal processes, to reflect upon whether any changes to your workforce or workplace, or lessons learnt more generally, should change your approach. To make that meaningful, accurate records should be kept of incidents that have arisen and how they have been handled, as well the training that has been provided and to whom.

### 5 Read the guidance

Making these enduring changes is no small task. However, while we await case law, the EHRC published detailed and helpful guidance in September which is likely to hold considerable sway. The full guidance is available to read [here](#).

The guidance helpfully provides case studies showing how the duty will apply in given scenarios. In addition, it explains legal terminology to help employers navigate the new requirements. Most notably, the guidance goes a significant way towards clarifying the ambiguity of what may be deemed to be 'reasonable' steps in a given workplace, although much will still depend on the context.

**If you have any queries about how to implement the new duty to prevent sexual harassment, or would like assistance with policies, training or investigations, please do get in touch with our team.**



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