

Sexual Harassment

10 September 2024

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Welcome

Presenter



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Petra joined Brachers as a Senior Associate in the Employment team in 2023. She previously worked at other regional law firms for over 15 years, where she gained valuable experience in providing legal advice on a broad range of employment matters.

Petra has over 20 years' legal experience in employment law having qualified in 1997 at a city law firm. Petra advises on a broad range of day-to-day workplace issues for both commercial and individual clients including all aspects of employment law. Petra is based in our Maidstone office.

[Connect with Petra on LinkedIn](#) to learn more.

Sexual Harassment

Definition

- Sexual harassment is unwanted conduct of a sexual nature which has the purpose or effect of :
 - violating an employee's dignity; or
 - creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee.

Is it a big problem?

The Statistics

- TUC Survey (2023) found three in five (60%) women have experienced sexual harassment at work, but only one in three report it to their employer.
- Government Equalities Office (2020) 29% of those surveyed had experienced sexual harassment at work in the previous 12 months, but only 15% of those had reported it to their employer.
- EHRC found a number of barriers to under-reporting of sexual harassment in the workplace.

Why is it important to address it?

The impact of sexual harassment

- Adverse impact on employees' mental and physical health.
- Damage to reputation.
- Damage to customer relations.
- Impact of employee retention and recruitment.

Current Law

Equality Act 2010

- Failure to protect employees from sexual harassment in the course of employment can amount to discrimination.
- Perpetrator and their employer may be liable.
- Employer can defend a claim if they can show they took **all** reasonable steps to prevent harassment from happening.

New preventative duty

Worker Protection (Amendment of Equality Act 2010) Act 2023

- Comes into force on 26 October 2024.
- Mandatory duty to take reasonable steps to prevent sexual harassment of employees in the course of their employment.
- What amounts to 'reasonable steps' depends on a number of factors.
- Duty is anticipatory and ongoing.
- Sexual harassment only (not harassment based on other protected characteristics).

Enforcement

- EHRC will have investigation and enforcement powers.
- Employment Tribunals can award an uplift to compensation of up to 25% where an employer is found to have breached the duty to prevent sexual harassment.
- Employees cannot bring a stand-alone action against their employer for breach of the preventative duty.

'Reasonable steps'

- Not a tick box exercise.
- What is 'reasonable' will depend on all the circumstances including:
 - the size of the employer;
 - the resources available to the employer;
 - the sector they operate in; and
 - the working environment.
- An employer should:
 - consider the risk of sexual harassment occurring in the workplace;
 - consider what steps it could take to reduce those risks; and then
 - consider which steps it would be reasonable to take.

Risk Assessments

- This is not a tick box exercise.
- Factors to consider include:
 - composition of the workforce;
 - physical distribution of the workforce;
 - historical data;
 - policy review; and
 - training.
- Document the assessment and list the action to be taken.
- Review on a regular basis.

Sexual Harassment Policy

- A separate sexual harassment policy will form a central plank of compliance.
- A policy should:
 - explain what sexual harassment is, giving examples that are relevant to the workplace;
 - confirm that it is unlawful and will not be tolerated in the workplace;
 - explain how to make a complaint and what will happen once a complaint is made;
 - confirm that it may lead to disciplinary action including dismissal; and
 - provide details on where to find information and support, such as an employee assistance programme.
- Put in place a system for a regular review of the policy.
- Consider where the policy is stored and how it is communicated?

Training

- Training should leave workers with a clear understanding of:
 - what harassment is;
 - what behaviour is required in the workplace – including at social events and online communications;
 - what to do if they experience harassment at work;
 - what to do if they witness harassment at work;
 - what to do if harassment is reported to them; and
 - what might happen if the organisation finds they have committed an act of harassment.
- Consider offering specialist training for managers.
- Repeat training on a regular basis and keep a record of who attended.

Reporting and Culture

- Create a workplace culture with zero tolerance to sexual harassment.
- Encourage reporting of sexual harassment issues.
- Conduct regular staff surveys to determine the extent of the problem.
- Consider having workplace champions.
- Monitor progress of sexual harassment complaints.

Third Parties

- New law originally contained specific wording to cover harassment by third parties but this was removed by the House of Lords.
- EHRC Guidance states that the preventative duty includes prevention of harassment by third parties.
- EHRC recommends:
 - including third parties in the harassment policy;
 - a public notice advising third parties that harassment of staff is unlawful and will not be tolerated;
 - including a term in contracts with third parties requiring them to adhere to the harassment policy; and
 - encouraging workers to report harassment by third parties.

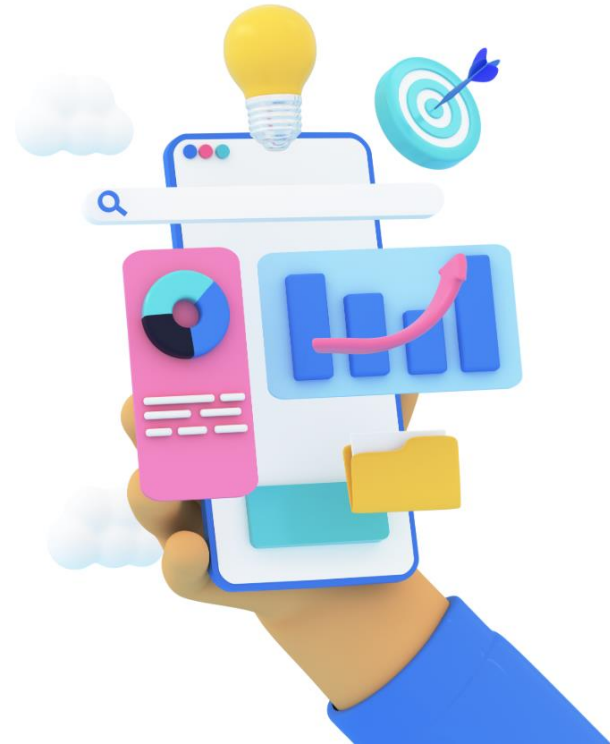
Conclusions

- New duty applies from 26 October.
- Employers need to act now .
- Start with a review of the risks in your workplace and then put in place reasonable steps to prevent them.
- Put in place a record keeping process.
- Review the state of play on a regular basis.

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