

Sexual Harassment at work – Employers should take note of changes coming into force in October 2024



Many businesses have acknowledged that they have a problem with sexual harassment in their workplace.

In early 2023, McDonalds entered into a legally binding agreement with the Equality and Human Rights Commission (EHRC) whereby it agreed to actively take steps to eliminate sexual harassment within its workplace.

Other businesses that have reached similar agreements with the EHCR in recent times include IKEA and Sainsburys, with the latter stating that employees' safety was its 'highest priority' after being held liable for sexual harassment against an employee back in 2018.

However, there can be little doubt that workplace sexual harassment remains a significant problem in many businesses.

A series of government consultations have led to the introduction of an additional duty on employers commencing on 26 October 2024 (contained in the Worker Protection (Amendment of Equality Act 2010).

The intention is to place a greater onus on employers to positively prevent sexual harassment.

From October 2024, every employer has an automatic duty to take reasonable steps to proactively prevent sexual harassment.

All employers actively need to do more to ensure workers are not harassed at work, or else, they may be held liable.

The Employment Tribunal will have the power to award potentially uncapped compensation if a claim for sexual harassment is successful.

In May 2023, an employee was awarded over £350,000 in compensation following successful claims at the Employment Tribunal, including sexual harassment and victimisation (see *Tahir v National Grid UK Ltd* [2023] ET 1803164/2021). It is evident that the costs to a business can be substantial, as can the reputational damage.

Whether an employer has taken reasonable steps to actively prevent sexual harassment is an objective test which will depend on the facts and circumstances of each case. In deciding whether a step is reasonable, several different factors would be considered by an Employment Tribunal, including the size and resources of the business, the relevant business sector, and the specific risks present in that workplace.

The EHCR recently updated its guidance on sexual harassment at work. The guidance details what can amount to sexual harassment and what may be deemed unwanted conduct of a sexual nature within the meaning of the Equality Act 2010.

The guidance also further details steps that can be taken by employers to not only prevent but also to respond to instances of sexual harassment.

We have outlined below some steps that you as an employer can take in preparation for this new proactive duty, but the EHCR guidance is also available here:

<https://www.equalityhumanrights.com/guidance/sexual-harassment-and-harassment-work-technical-guidance>

- **Training** – It is important to carry out effective training sessions with employees on topics such as what constitutes sexual harassment and how to avoid sexually harassing a colleague. Employees should be informed that all forms of sexual harassment are strictly prohibited and will result in disciplinary action (as should be detailed in internal policies). Managers should also be specifically trained on how to address such issues should they arise.
- **Policies** – It is important to have the correct policies in place on sexual harassment which signpost practical procedural steps to address all sexual harassment issues, and which will be followed by the business in all cases.
- **Guidance** – Clear guidance to employees on how to raise sexual harassment complaints and the steps that will be taken by the business.
- **Risk assessments** – Businesses may want to carry out risk assessments and act accordingly. For example, employees that work on night shifts or in an area with alcohol consumption may have a greater risk of being sexually harassed by colleagues. Accordingly, additional measures should be considered and put in place.
- **Act now** – Do not wait until a complaint for sexual harassment has been made before you take the necessary action.
- **Legal Advice** – If in doubt, seek legal advice to mitigate the potential costs to the business.

If you need advice on sexual harassment in the workplace and the steps that you as a business should be taking, please contact us.



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