

UK: DUTY TO PREVENT SEXUAL HARRASSMENT - 3 THINGS EMPLOYERS NEED TO KNOW

From October 26, 2024, all UK employers will have a duty to take “reasonable steps” to prevent sexual harassment of their employees in the course of their employment.

The Equality and Human Rights Commission (EHRC) have updated their guidance on sexual harassment to cover the scope of this new duty.

The guidance lacks detail on the scope of the duty, but there are 3 key things employers should be aware of:

1. The new duty requires employers to assess carefully the risk of sexual harassment happening in their business and take steps to prevent it. Employers that take a passive or reactive approach to sexual harassment are likely to find themselves in breach.
2. What is “reasonable” is an objective test that will vary from employer to employer. Relevant factors will include the size of the employer, the sector it operates in, the working environment and its resources, the types of third parties employees may come into contact with, level of risk and how effective the step might be when bearing factors like time, cost, and level of disruption in mind. While liability for harassment by third parties was removed, employers must take reasonable steps to prevent sexual harassment by third parties.
3. The EHRC will have wide enforcement powers. This will include the power to investigate, issue unlawful act notices, enter into legally binding agreements with employers to prevent future unlawful acts and seek injunctions to restrain employers from committing unlawful acts. The EHRC will not need to wait for an incident of sexual harassment to take place or for an employee to bring a claim. They can exercise these powers if it suspects there may have been a breach of the new preventative duty.

The EHRC ran a short consultation on the Guidance, as such it may issue further updated guidance in light of the responses prior to October 26th. It is recommended that employers start taking steps now to ensure that they are ready to comply from day one.

The new Labour government has indicated that it plans to extend the rules to require employers to take “all” reasonable steps to prevent harassment arising, not just “reasonable” steps, so we could see further updates in the near future.

This is a high level general update only. Legal advice should be obtained on specific circumstances.