

Raising the bar: strengthened sexual harassment duties for employers this October

Employment Briefing

With effect from 30 October 2026, the Employment Rights Act 2025 will strengthen employer obligations around workplace harassment. It will introduce an enhanced preventative duty to take all reasonable steps to prevent sexual harassment, as well as (re)introducing liability for third-party harassment.

These reforms form part of a broader tightening of harassment frameworks under the Employment Rights Act 2025. Related measures include new restrictions on using non-disclosure agreements in cases of harassment (expected to take effect in 2027) and the express inclusion of sexual harassment in the list of qualifying disclosures for whistleblowing protection (which came into force on 6 April 2026).

What is changing?

A higher bar for the preventative duty

Since October 2024, employers have been subject to a preventative duty to take "reasonable steps" to prevent sexual harassment of their workers. As a result of the new reforms, employers will now be required to take "all reasonable steps" to prevent sexual harassment. The insertion of the word "all" is a meaningful change, creating a more onerous obligation for employers. If an employee can identify a single reasonable step that the employer did not take, this will be sufficient to establish a breach of the duty. In practice, this is likely to make it significantly more difficult for employers to defend sexual harassment claims.

The heightened standard brings the preventative duty into line with the existing statutory defence under the Equality Act 2010 requiring an employer to show that it took all reasonable steps to prevent the unlawful conduct in question. That defence has traditionally been regarded as a high hurdle and is seldom relied on in practice. However, it is expected that more employers may seek to invoke it once the expanded preventative duty takes effect.

An employee cannot bring a standalone claim for breach of the preventative duty, but a failure to comply can result in the employment tribunal uplifting compensation awarded in a sexual harassment claim by up to 25%. The Equality and Human Rights Commission ("EHRC") may also

pursue direct enforcement action against employers who fail to comply.

Employer liability for third-party harassment

The Act reintroduces employer liability for "permitting" harassment by third parties, if an employer fails to take all reasonable steps to prevent harassment from occurring in the course of employment. 'Third parties' for this purpose are anyone other than the employer or a fellow employee, such as clients, customers, contractors or members of the public. The change covers all types of harassment, not just sexual harassment.

Unlike the previous formulation of the duty (repealed in 2013), the new provisions do not require at least two known instances of harassment before liability can arise. An employer could therefore be held liable following a single incident involving a third party. The burden of proof will rest on the employee to show that the employer failed to take all reasonable steps to prevent the harassment.

This reintroduction will raise the stakes for employers, not least because affected individuals will be able to bring claims directly, rather than relying on the EHRC to take enforcement action. It will put employers' preventative measures in the spotlight. There will be more limited scope for scrutiny of whether the harassment actually took place, with a third party as the accused harasser. Attention will inevitably shift to what measures the employer took to prevent harassment of its staff.

Looking ahead: what should employers be doing now?

Employers should be reviewing their arrangements now to ensure they are taking all reasonable steps to prevent harassment. For employers who responded proactively to the October 2024 changes, the shift to "all reasonable steps" may not feel like a complete overhaul. However, it will still be prudent to undertake a careful re-examination of existing measures. Employers who cannot demonstrate a thorough approach to harassment prevention will face increased exposure under the new framework.

Practical steps for employers to consider may include:

Revisiting risk assessments to check for gaps in coverage, taking account of lessons from any recent issues or past investigations. Risk analysis should be business-specific and, where relevant, site or shift-specific.

Reviewing policies and procedures to ensure they are effective and reflect the new legal requirements.

Ensuring varied reporting routes are available (for example, an HR route alongside an anonymous reporting mechanism).

Delivering targeted training across the workforce, with particular emphasis on giving managers the tools to set the right tone and to handle concerns promptly when they arise.

Surveying employees anonymously and using their feedback to identify areas for improvement.

Addressing risks from third parties, including reviewing commercial terms and arrangements with contractual third parties (such as suppliers) and embedding anti-harassment provisions, and taking practical measures such as signage, challenging unacceptable behaviour and acting on complaints for members of the public.

Documenting evidence of all decision-making processes and reasonable steps taken.

Further detail on what may constitute "reasonable steps", for the purposes of both the preventative duty and third-party harassment, is expected to be set out in regulations. However, these regulations are not expected until at least 2027/2028, meaning that the reforms will come into force without new statutory guidance to accompany them. In the meantime, the EHRC's existing guidance remains an important point of reference.

If you would like to discuss any of these issues further, please speak to your usual Slaughter and May contact.

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