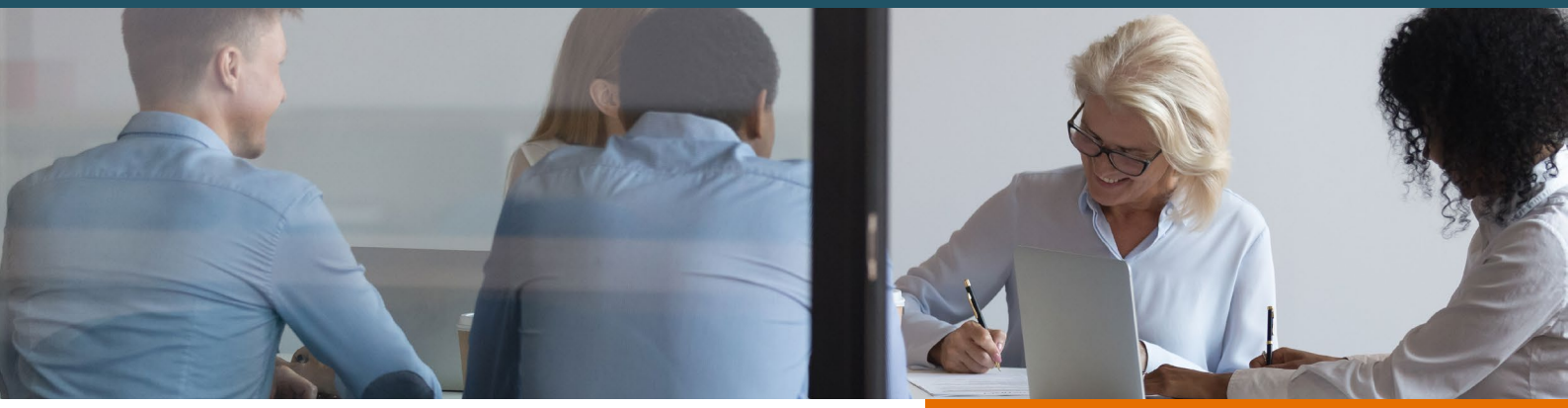
New Worker Protection Rules - Are You Ready?



The Worker Protection (Amendment of Equality Act 2010) came into force on 26th October 2024.

Are you up to speed with the new changes?

The aim of this legislation is to prevent "sexual" harassment in the workplace. It seeks to achieve that aim by strengthening existing legislation by introducing a positive duty on employers to take reasonable steps to prevent sexual harassment in the workplace.

Why should I care?

A recent Government Survey found that 54% of employees had experienced sexual harassment in the workplace. Campaigns such as #metoo have increased awareness and inevitably the number of complaints.

Under current legislation sexual harassment is already unlawful and employers can be held vicariously liable for sexual harassment which takes place in the course of employment.

Employment has a wide meaning and provides protection to employees (those who have a contract of employment), workers (those who contract to do work personally and who cannot send someone to do the work in their place), and apprentices.

Employers are also responsible for preventing harassment against job applicants and contract workers (including agency workers and who contract to provide work personally such as consultants).

However, employers have a potential defence to a claim where they can show they took all reasonable steps to prevent the harassment from occurring.

What has changed?

The new legislation imposes a mandatory legal duty on employers to proactively prevent harassment by the taking of preventative measures.

The preventative duty includes prevention of sexual harassment by third parties. Therefore, if an employer does not take reasonable steps to prevent sexual harassment of their workers by third parties, the preventative duty will be breached.

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What has changed? continued...

Whilst there is no freestanding right to pursue a claim because of a failure to take preventative steps, where an employer is found vicariously liable for acts of sexual harassment an Employment Tribunal now has the power to increase compensation by as much as 25% where the employer is unable to demonstrate that the took preventative steps to comply with their new statutory obligations.

Additionally, the Equality and Human Rights Commission has enforcement powers which include compelling a company to undertake training, implement action plans and take other necessary steps to ensure a safe work environment.

What should I be doing?

The legislation does not set out a list of specific steps that an employer must take to comply with the legislation. This is case specific and will take into consideration factors such as the size and resources of the company and the level of risk.

There are however some steps that you should consider to ensure your business meets the new legislative requirements:

1. Increase education and awareness

The starting point is to understand what sexual harassment is. The law defines sexual harassment as unwanted behaviour of a sexual nature that creates an intimidating, hostile, degrading or humiliating work environment. The conduct does not need to be intentional, nor does it need to be sexually motivated, only sexual in nature. Examples might include lewd jokes and banter, unwanted touching and sharing of inappropriate images.

2. Consider organisational and cultural change

Senior Leaders have a defining influence on a business. They embed values and set the tone in respect of behaviours and expectations.

All staff, irrespective of their work status and seniority should undergo training to be able to identify sexual harassment and be able to properly respond.

3. Review policies and procedures

Having a policy on sexual harassment alone will not be enough.

Any existing policies should be reviewed in consultation with the work force and trade unions to ensure they are fit for purpose on a regular basis.

Ideally there should be a separate policy governing sexual harassment.

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Policies should make clear the expectations of the business and set out mechanisms for reporting and responding to complaints of sexual harassment. Companies must also ensure that policies match and undertake a review of other policies including those pertaining to disciplinary procedures, social media and dress codes.

The obligation to take positive pro-active steps is not static. Employers should monitor and review policies regularly, from the time of their induction and at regular intervals throughout the working relationship.

Companies must maintain records regarding any complaints of harassment and undertake regular staff surveys.

Consider sending letters to clients and contractors to advise on the business refreshed stance on tackling sexual harassment and that it will not be tolerated.

Instruct managers who manage the firms' relationships with clients/contractors to arrange in person meetings to discuss the firms approach and ensure that relevant policies, responsibilities and reporting mechanisms are established for sexual harassment involving third parties.

Instruct managers to discuss any initial client visits and review lone working arrangements with female staff to establish they are comfortable and safe.

4. Risk assessments

Employers must undertake risk assessments to identify any areas which may leave staff open to sexual harassment. Regard should be had to workplaces which operate lone working, are male dominated or where there are regular interactions with third parties.

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Action: Employers need to act now to prevent themselves falling foul of the new legislation. The duty requires positive, pro-active steps designed to transform workplace culture. The new legislation is an opportunity to build awareness, encourage compliance and create a safe working environment for all.

Further advice and support can also be obtained from Lawson West Solicitors Ltd, Leicester at www.lawson-west.co.uk or Contact Us.