

**SHOOSMITHS**

# Preventing harassment

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# Speakers



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# Today's topics

- Polls – your experiences of the new duty
- What has been happening in practice?
- Harassment – a quick recap
- The new duty to prevent sexual harassment
- Future changes in the Employment Rights Bill
- Key takeaways
- Thorny questions and Q&A



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# Polls – your experiences of the new duty

# Polls

## Question 1

Has your business made any changes in response to the duty to prevent sexual harassment?

## Question 2

Has your business implemented a new (or updated) anti-harassment policy?

## Question 3

Has your business completed a sexual harassment risk assessment?

## Question 4

Has your business provided anti-harassment training to all staff (including management)?

## Question 5

Has your business conducted any staff surveys to understand staff's experiences of sexual harassment at work?

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What has been  
happening in practice?



# What has Acas been seeing?

- Recorded cases of sex discrimination were up in 2024 by 6.2% from the previous year
- Acas reports that 16% of reported sexual discrimination cases involved sexual harassment
- Sexual harassment-related queries to Acas have more than doubled in 2024
- Employee queries to Acas' helpline relating to sexual harassment increased by 59% in Q3 2024
- There was a 168% increase in employer queries to Acas about sexual harassment in Q3 2024



# What has Shoosmiths been seeing?

- An increase in complex grievances involving allegations of sexual harassment (including scenarios involving one's person's word against another)
- Clients requesting anti-harassment and bullying policies (either new policies or updates to existing policies)
- HR teams asking for training to ensure that they are up-to-date on the requirements of the new duty to prevent sexual harassment
- Clients requesting training for their HR teams in the handling of grievances and how to conduct investigations into allegations involving sexual harassment
- Clients requesting training for all staff (including additional detail for managers) on sexual harassment and how to prevent it
- Clients asking for help with putting together a sexual harassment risk assessment for their business



# Poll results: what have you been seeing?

**Question 1**

Has your business made any changes in response to the duty to prevent sexual harassment?

**Question 2**

Has your business implemented a new (or updated) anti-harassment policy?

**Question 3**

Has your business completed a sexual harassment risk assessment?

**Question 4**

Has your business provided anti-harassment training to all staff (including management)?

**Question 5**

Has your business conducted any staff surveys to understand staff's experiences of sexual harassment at work?

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# Harassment – a quick recap

# Definition: harassment

A person (A) harasses another (B) if–

- a) A engages in **unwanted conduct** related to a **relevant protected characteristic** or of a **sexual nature**; and
- b) the conduct has the **purpose or effect** of–
  - i. violating B's **dignity**, or
  - ii. creating an intimidating, hostile, degrading, humiliating or offensive **environment** for B.

# Unwanted conduct

- written words
- banter
- posts or contact on social media
- imagery
- graffiti
- physical gestures
- facial expressions
- mimicry
- jokes or pranks
- acts affecting a person's surroundings
- aggression
- physical behaviour towards a person or their property





# Sexual harassment

- Sexual harassment includes unwanted sexual advances, requests for sexual favours and other verbal, non-verbal or physical conduct of a sexual nature, which has the purpose or effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive working environment
- It also includes treating an employee less favourably for either rejecting or submitting to unwanted conduct of a sexual nature

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# The new duty to prevent sexual harassment

# The new law regarding sexual harassment

## **Worker Protection (Amendment of Equality Act 2010) Act 2023**

- Came into force on 26 October 2024
- **Employers have a preventative duty**
- An employer (A) must take **reasonable steps** to **prevent** sexual harassment of A's employees in the course of their employment

# The new law regarding sexual harassment

## **Worker Protection (Amendment of Equality Act 2010) Act 2023**

Sexual harassment claim + employee wins + employer failed to take 'reasonable steps'

=

tribunal can raise award payable by a **further 25%**



# EHRC – 8 Step Guide: preventing sexual harassment at work

- The EHRC published on 26 September 2024 its 8-step guide on preventing sexual harassment at work
- The document is not an exhaustive list, but implementing the steps should help an employer take positive action to prevent and deal with sexual harassment in the workplace

# EHRC 8 Step guide - deep dive

## **Step 1: develop an effective anti-harassment policy**

- Are you going to introduce a sexual harassment policy?
- What should it include?

## **Step 2: engage your staff**

- How will you go about this?
- What should your workers be aware of?

# EHRC 8 Step guide - deep dive (continued)

## **Step 3: assess and take steps to reduce risk in your workplace**

- Where in your workplace are workers most vulnerable to sexual harassment?
- What steps can be taken to minimise these risks?

## **Step 4: reporting**

- How might you help workers report instances of sexual harassment?
- Keeping (confidential) records of such reports will help to identify trends

# EHRC 8 Step guide - deep dive (continued)

## **Step 5: training**

- All workers, including managers and senior staff, should be trained
- How will you ensure training remains effective?

## **Step 6: what to do when a sexual harassment complaint is made**

- Act quickly and report the outcome of any investigation to the complainant in a timely manner
- How will you protect complainants from victimisation?



# EHRC 8 Step guide - deep dive (continued)

## **Step 7: dealing with harassment by third parties**

- Will you need to change the action you take when the harassment is by a third party?
- Guarding against harassment by third parties may necessitate undertaking risk assessments

## **Step 8: monitor and evaluate your actions**

- What system(s) will you put in place to ensure your actions are routinely monitored?

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# Future changes in the Employment Rights Bill

# Employment Rights Bill 2024

- Introduced on 10 October 2024
- Separate from the Worker Protection (Amendment of Equality Act 2010) Act 2023
- Will (if it becomes law) make two significant changes to this area of law:
  - (1) It will enhance the duty to prevent sexual harassment to “*all reasonable steps*”
  - (2) It will require employers to prevent harassment **by third parties** – for example, customers or suppliers – for all forms of harassment (not limited to sexual harassment)
- Other proposals include making complaints of sexual harassment public interest disclosures
- Likely to have legal effect from Autumn 2026

# (1) All reasonable steps

- The Bill does not define “all reasonable steps”, but two places might give an indication of what these could be
- The Bill includes provision for regulations to be passed specifying what “all reasonable steps” will entail, but that the expected steps are likely to include the following:
  - Carrying out risk assessments
  - Publishing relevant policies and procedures
  - Introducing steps to assist with the reporting of sexual harassment
  - Introducing steps to assist in the handling of complaints

## (2) All reasonable steps

- We can also look to the existing “all reasonable steps” defence applying to vicarious liability for discrimination
- Case law has set out that a tribunal will need to consider:
  - What steps the employer took?
  - Were there other reasonable steps the employer could have taken?
- In a case from 2020, the EAT held that a tribunal should take into account the following when deciding what is reasonable in the circumstances:
  - Likelihood that steps would have been effective in preventing discrimination (or harassment)
  - Cost
  - Practicality

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# Key takeaways



# Key takeaways

1. Ensure that your business' values are reflected in its culture on the ground and are modelled from the top down
2. Conduct a thorough risk assessment of your business
3. Refresh your policies and implement new ones where necessary
4. Roll out meaningful training to all staff, inc. specific modules targeted at managers (who will have additional responsibilities)
5. Avoid taking a “tick-box” approach
6. Treat complaints seriously and even-handedly
7. Get into the “all reasonable steps” mindset ahead of time
8. Schedule a policy update once the Employment Rights Bill has been implemented – third-party harassment sections will need amending



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# Thorny questions

# Questions...

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