

THE WORKER PROTECTION ACT

NEW PREVENTATIVE DUTY

BACKGROUND

The Worker Protection Act (otherwise known as the preventative duty) came into effect on 26 October 2024.

The new duty is an anticipatory duty, meaning that employers need to take a proactive and preventative approach to protecting their employees from workplace sexual harassment. Research shows that workplace sexual harassment is endemic, and while anyone can experience sexual harassment it is overwhelmingly women who are targeted.

This duty is an important move forward in tackling workplace sexual harassment as employers are now obliged to act prior to any harassment happening. The new duty means employers will have to proactively think about the potential risks in their organisations and take 'reasonable steps' to mitigate or minimize them, including risks posed by third party harassment (customers, clients, service users etc.)

The duty is an ongoing one and compliance is not a one-off process. Regular assessment of possible risks, taking steps where incidents of sexual harassment have happened and considering whether additional steps are needed to comply with the duty will all form part of an effective approach to preventing sexual harassment. This is the duty applies regardless of whether an employer has had complaints of sexual harassment.



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Even Personnel Today has stated that:

"As an employer, you are already likely to have some steps in place to prevent sexual harassment. For example, you may have an anti-harassment policy, regular equality and diversity training and a reporting mechanism through which concerns can be raised. Those steps alone, however, are unlikely to be sufficient to demonstrate compliance with the new duty. Indeed, it is clear that the EHRC will expect all employers to identify some additional, concrete practical steps they need to take in order to comply with the new duty. It is important that you formally assess the risks, through a risk assessment, and from there decide on any additional steps you may need to introduce."

Thompson's Solicitors state that:

"Employers are unlikely to be able to meet the requirement of the preventative duty to take reasonable steps to prevent sexual harassment of their workers if they do not carry out a risk assessment"

So, employers need to act and not just rely on existing policies and procedures.

UNITE POSITION

Unite have developed posters/leaflets/ briefing materials on this new preventative duty and have updated our Zero Tolerance guidance that is an excellent comprehensive guide to both the prevention of sexual harassment but also supporting members when it does occur. Please visit our website and download the resources <https://www.unitetheunion.org/what-we-do/equalities/sectors/women>

Also, union reps should:

- Seek negotiations with employers to ensure they are looking at risk assessments, training and updating their policies to ensure they are complying with the new duty
- For employers with staff members who come into contact with third parties, they should be asked what extra measures are they developing to prevent third party harassment from customers or service users.

The EHRC guidance provides some good examples of what may be accepted as an employer taking "reasonable steps" to prevent sexual harassment but in our union recognised workplaces we will want to push for more than the basic legislative position.

Some areas that employers need to consider are:

Step 1	Do they have an existing effective anti-harassment policy?
Step 2	Do they engage their staff?
Step 3	They will need to assess and take steps to reduce risk in their workplace
Step 4	Do they have a robust reporting system? Confidential and accessible?
Step 5	What training has been delivered? Mandatory should be the default
Step 6	What happens a harassment complaint is made
Step 7	Extra conditions to be considered when dealing with harassment by third parties – are there clear zero tolerance signs, message to service users with consequences if harassment takes place
Step 8	How do you monitor and evaluate your actions – how often?

In particular, employers should consider:

- lone working and night working
- out of hours working
- the presence of alcohol
- customer-facing duties
- particular events that raise tensions locally or nationally
- lack of diversity in the workforce, especially at a senior level
- workers being placed on secondment
- travel to different work locations
- working from home
- attendance at events outside of the usual working environment, for example, training, conferences or work-related social events
- socialising outside work
- social media contact between workers
- the workforce demographic, for example, the risk of sexual harassment may be higher in a predominantly male workforce.
- power imbalances
- job insecurity, for example, use of zero hours contracts, agency staff or contractors

FUTURE DEVELOPMENTS

In its original form, the law contained the right to take an employer to tribunal if they did not take reasonable steps to prevent sexual harassment by a third party. However, this right - as well as for those reporting sexual harassment to be given whistleblower protections - was removed by the Tory government.

The Labour government in its amendments in the Employment Rights Bill have indicated that they strengthen employers' obligations to prevent sexual harassment and the potential consequences of any breach.

If implemented, the Bill would:

- amend the scope of the preventative duty to provide that employers must take 'all reasonable steps' to prevent sexual harassment of their workers (rather than simply 'reasonable steps').
- grant the Secretary of State powers to specify certain steps that will be regarded as 'reasonable' (such as risk assessments) and to require employers to 'have regard' to certain matters when taking those steps;
- broaden the definition of 'protected disclosure' in existing whistleblowing protections to include a disclosure that 'sexual harassment has occurred, is occurring or is likely to occur'.
- introduce a new third-party harassment claim in the Equality Act, allowing workers to bring a claim against their employer where they are harassed by a third party in the course of their employment and the employer failed to take all reasonable steps to prevent the third-party harassment. As currently drafted, this new claim would not be limited to sexual harassment by third parties and instead would cover all types of harassment carried out by third parties.



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