

## Employers to take all reasonable steps to prevent sexual harassment

### What is the current policy/legal framework?

The Worker Protection (Amendment to the Equality Act 2010) Act 2023 came into force on 26 October 2024. This introduced a legal duty on employers to take “reasonable steps” to prevent sexual harassment of their employees. The Employment Rights Bill will amend the duty to require employers to take “all reasonable steps” to prevent sexual harassment of their employees.

### Policy Intent

The amended duty will mirror the existing concept of the “all reasonable steps” defence in section 109(4) of the Equality Act 2010. The concept of “all reasonable steps” has the advantage of being a well-established concept with which employers and employment tribunals are already familiar. This should decrease uncertainty for employers and employees.

It is important that the threshold in the preventative duty is consistent with the existing statutory defence against an employer's vicarious liability for the actions of their employees, which can be used in sexual harassment claims. Removing the discrepancy ensures that there is no confusion or a perception that the threshold is lower for sexual harassment and therefore, employers do not need to take a thorough approach to prevention. What constitutes “all reasonable steps” will depend on the specific circumstances of the employer, such as their size, sector, and other relevant facts. Employers simply need to do all that is reasonable.

### How will it work?

Where an employment tribunal has found that sexual harassment has occurred and ordered the employer to pay compensation, it must also then consider whether the employer has taken all reasonable steps to prevent the harassment; and if not, the tribunal may order an uplift in the compensation paid to the employee.

A breach of the duty is also enforceable by the Equality and Human Rights Commission under its existing enforcement powers.

### Key Stats

Women's equality is at the heart of this Government's missions. That is why our Plan to Make Work Pay will transform the lives of working women. We are committed to our landmark mission to halve violence against women and girls in a decade. The Office for National Statistics (ONS) in the year ending March 2024, found that 21.8% of people aged 16 years and over who have said they have experienced in-person sexual harassment in the last 12 months had done so at their place of work; this must change.<sup>1</sup>

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<sup>1</sup> Office for National Statistics (2024) [The nature of violent crime: appendix table.](#)

## Common questions

*Can you provide examples of “reasonable steps” for the preventative duty?*

- The Equality and Human Rights Commission has published updated guidance and resources to support employers with the changes, including guidance on steps employers can take to prevent sexual harassment at work.
- These can include developing effective anti-harassment policies, undertaking risk assessments, engaging and training staff, ensuring effective reporting and complaints systems are in place, and evaluating steps taken on an ongoing basis.
- What is reasonable will vary from employer to employer and will depend on factors such as (but not limited to) the employer’s size, the sector within which it operates, the working environment and its resources.
- Different employers may prevent sexual harassment in different ways, but no employer is exempt from the sexual harassment preventative duty.

*Will there be guidance to support employers with changes?*

- Businesses will be provided with clear guidance on these measures in order to ensure that they are fully supported in complying with the new legislation.
- We will also continue to engage with the Equality and Human Rights Commission on how they can best support employers.
- The EHRC most recently updated their technical guidance on sexual harassment and harassment in the workplace to reflect the upcoming changes to support employers with the new preventative duty.

*What is the difference between “reasonable steps” and “all reasonable steps,” what is the point of the change?*

- Employers have a legal defence to employer liability claims, including sexual harassment, under section 109 of the Equality Act 2010 if they can show that they took “all reasonable steps” to prevent their employees from acting unlawfully. However, the duty in section 40A currently only requires employers to take “reasonable steps” to prevent sexual harassment.
- It is important that the threshold in the preventative duty is consistent with the existing statutory defence against an employer’s vicarious liability for the actions of their employees, which can be used in sexual harassment claims.
- It ensures that there is no confusion or a perception that the threshold is lower for sexual harassment.
- Removing the discrepancy reduces uncertainty for employers and instead emphasises the thorough approach employers must take to prevent sexual harassment to avoid legal liability and additional financial penalty.

# Harassment by third parties

## What is the current policy/legal framework?

Harassment by third parties (such as by clients or customers), whether related to sex or any other protected characteristic, is not currently prohibited under the Equality Act 2010.

## Policy Intent

To ensure workplaces and working conditions are free from harassment, we must protect employees from third-party harassment. Introducing explicit protections from third-party harassment will ensure that victims can be confident that they have recourse to legal redress if their employer has not taken all reasonable steps to protect them.

All three forms of harassment in section 26 of the Equality Act 2010 will be covered. Along with sexual harassment, this includes treating someone less favourably because he or she has either submitted to or rejected sexual harassment or harassment related to sex or gender reassignment. All protected characteristics in scope of the existing harassment provision are in scope of this clause: age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation.

An employer permits a third party to harass an employee only in circumstances where an employee is harassed in the course of their employment, and it is shown that the employer failed to take all reasonable steps to prevent the third party from harassing them.

## How will it work?

The measure will be enforced in the same way as the existing harassment measures within the Act. Individuals will be able to take a claim against their employer to an Employment Tribunal, and the EHRC may also use its enforcement powers to take action.

Conduct that is trivial or causes minor offence will not be sufficiently serious to meet the definition of harassment. The Equality Act 2010's definition of harassment requires significantly more than that conduct leads to the taking of offense in order for it to be unlawful.

Harassment involves being subjected to unwanted conduct which has the purpose or effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

In order to meet this test, it is not enough for the claimant to perceive subjectively that someone's conduct is offensive. Where the defendant had not intended to create an intimidating, hostile, degrading, humiliating or offensive environment, the tribunal must consider whether it was reasonable for the conduct to have that effect. This is an objective test in which the reasonableness, and the facts, of the individual situation must always be considered.

Employers will not be penalised for failing to anticipate the unforeseeable or take other impractical steps. Instead, employers simply need to do what is reasonable.

Therefore, employers cannot, and are not expected to, police or control every action of third parties. For example, this clause would not require employers to police all customers' private conversations.

The steps that an employer can reasonably take in respect of the actions of third parties in their workplace are clearly more limited than the steps they can take in respect of their employees, and this will be taken account of by the Employment Tribunal when considering the facts of the case. Employers simply need to do what is reasonable; for example, they should consider the nature of any contact with third parties, including the type of third party, frequency, and environment.

Even where such tests are met, courts and tribunals will also be required to balance competing rights on the facts of a particular case - including the right of freedom of expression under the European Convention on Human Rights. This will require that any interference with the right to freedom of expression be necessary and proportionate.

## Key Stats

For the year ending March 2024, 9.2% of people aged 16 years and over who said they had experienced non-sexual harassment in the last 12 months, reported that they had been harassed by a client or member of the public contacted through work.<sup>2</sup> This is an increase from 6.2% for the year ending March 2023.<sup>3</sup>

Across both sexual and non-sexual harassment, women were more likely to be harassed by a third party than men. For the year ending March 2024, 8.2% of women who had experienced any harassment in the last 12 months reported that they were harassed by a client or member of the public contacted through work. This compared to 3.9% of men.<sup>4</sup>

Since 2000, increased women's economic inclusion has accounted for around 40% of UK economic growth. Half of this contribution has come from increased female labour force participation and half from an increase in hours worked by females.<sup>5</sup> To support women's participation in the labour market, we need to ensure adequate protection in the workplace.

## Common questions

*Will third-party harassment provisions increase burdens on business?*

- Employers simply need to do what is reasonable. What constitutes 'all reasonable steps' will depend on the specific circumstances of the employer.
- In certain sectors or in certain roles, there may be more regular worker interaction with third-party contractors, suppliers, customers or other members of the public than others.
- Employers will not be penalised for failing to take unworkable or impractical steps. For example, this clause would not require employers to foresee the wholly unforeseeable or police all customers' private conversations.

*Will third-party harassment provisions have a chilling effect on free speech?*

- No. Free speech is a cornerstone of British values, but harassment is not free speech. This Bill concerns employer liability for workplace harassment, which is a serious issue and not to be underplayed.
- This measure does not change how Article 10 of the European Convention of Human Rights applies - any interference with the right to freedom of expression must be necessary and proportionate.
- The Explanatory Notes to the Equality Act specifically state that, in determining the effect of the unwanted conduct, courts and tribunals must balance competing rights on the facts of a particular case – which could include the rights of freedom of expression, religion and protected belief (as set out in Articles 9 and 10) and academic freedom.

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<sup>2</sup> ONS (2024) [The nature of violent crime: appendix tables.](#)

<sup>3</sup> ONS (2023) [Experiences of harassment in England and Wales: December 2023.](#)

<sup>4</sup> ONS (2024) [The nature of violent crime: appendix tables.](#)

<sup>5</sup> OECD (2024) [Gender equality and economic growth.](#)

# Power to make provision about “reasonable steps”

## What is the current policy/legal framework?

The Equality Act 2010 does not state which steps are reasonable to take to prevent sexual harassment. Clause 21 inserts new section 40B, entitled ‘Prevention of sexual harassment: power to specify “reasonable steps”’ into the Equality Act 2010.

## Policy Intent

While the preventative duty (under section 40A of the Equality Act 2010) places broad requirements on employers, it will be important to ensure that specific steps are taken where the evidence demonstrates they are needed in order to prevent sexual harassment. We will, therefore, require employers to take specific steps regarded as “reasonable” where this is proportionate and there is a clear evidence base supporting their efficacy in preventing workplace sexual harassment.

The power is narrow in scope, and the secondary legislation will be laid under the affirmative procedure. This is appropriate due to the level of detail that may be set out in the regulations and the requirements they may place on employers. The affirmative procedure will ensure that Parliament has the opportunity to debate and scrutinise the matters as they are set out.

We will consult on any proposed requirements before regulations are made. We will also build on our existing research into the most effective steps employers can take to reduce sexual harassment.

## How will it work?

The Bill introduces a power to allow a Minister of the Crown to make regulations to specify steps which an employer must take and matters to which they must have regard for the purposes of meeting the obligations set out in the Equality Act 2010 to take all reasonable steps to prevent sexual harassment. This is a delegated power that will allow the Government to make regulations at a later date.

The regulations may specify steps that are to be regarded as “reasonable” for the purpose of determining whether, for the purposes of the Equality Act 2010, an employer has taken, or failed to take, all reasonable steps to prevent sexual harassment of an employee. A non-exhaustive list of obligations will be set out that are to be regarded as reasonable steps an employer must take in order to prevent workplace sexual harassment. Employers to which the duties apply must take these steps while also taking all other preventative steps that are reasonable in the particular circumstances.

Any requirements specified will be reasonable for the employers to which they apply. The steps that may be specified in regulations include, among others—

- carrying out assessments of a specified description;
- publishing plans or policies of a specified description;
- steps relating to the reporting of sexual harassment;
- steps relating to the handling of complaints.

Any steps may require an employer to have regard to specified matters when taking those steps.

## Key Stats

The most reliable estimate available on the prevalence of sexual harassment in the workplace comes from the Office for National Statistics’ Crime Survey for England and Wales. For the year ending March 2024, ONS data showed that 21.8% of people aged 16 years and over who said they

had experienced sexual harassment in-person in the last 12 months experienced this at their place of work <sup>6</sup>

## Common questions

*Will employers only need to take the specific steps specified?*

- Compliance with any specific steps set out in regulations will not remove the requirement that employers comply with the broader preventative duty, which requires that “all reasonable steps” are taken to prevent sexual harassment.
- An employer that wants to show that it has taken all reasonable steps should take the relevant steps set out in the regulations; as well as all other preventative steps that it is reasonable for them to take in the particular circumstances

*What sort of specific steps do you intend to introduce?*

- Any requirements specified will be reasonable for the employers to which they apply.
- The steps that may be specified in regulations include, among others
  - carrying out assessments of a specified description;
  - publishing plans or policies of a specified description;
  - steps relating to the reporting of sexual harassment;
  - steps relating to the handling of complaints.

Will there be consultation on the regulations that the delegated power will introduce?

- Yes. We will consult on any proposed requirements before regulations are made.

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<sup>6</sup> ONS (2024) [The nature of violent crime: appendix tables.](#)