

# Preventing Sexual Harassment: A New Duty in the Workplace – What Schools Need to Know

A new duty to prevent sexual harassment came into force on 26 October 2024 as enacted by the Worker Protection (Amendment of Equality Act 2010) Act 2023.

Under the Equality Act 2010 a person sexually harasses someone where:

- they engage in unwanted conduct of a sexual nature; and
- the conduct has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

Unwanted conduct of a sexual nature can be wide ranging. It can include but is not limited to:

- sexual comments or jokes ("banter") whether at work, outside of work or in work related groups such as WhatsApp groups
- suggestive looks, staring or leering
- propositions and sexual advances
- sexual gestures

The new duty requires employers to take reasonable steps to prevent the sexual harassment of employees during the course of their employment. The duty builds upon existing protection against sexual harassment under the Equality Act 2010 and places a greater burden on employers to take preventative action.

The Equalities and Human Rights Commission (EHRC) published [technical guidance about sexual harassment and harassment at work](#) in 2020 which was updated on 26 September 2024 to cover this new legal obligation on employers to take reasonable steps to prevent sexual harassment of their workers. The updated guidance clarifies several key features of the new duty including what amounts to a reasonable step, as well as third-party harassment. Employment tribunals will have regard to the guidance when determining whether an employer has complied with their duty.

## THE DUTY TO TAKE REASONABLE STEPS

The key feature of the new duty is that it is preventative and anticipatory. This means that employers should anticipate situations where their workers could experience sexual harassment and take reasonable steps to prevent this. A greater risk of sexual harassment may exist, for example, where a worker is lone working or working at night, where there is a significant power imbalance or

where a worker is vulnerable. If sexual harassment has occurred, the duty requires an employer to take action to stop sexual harassment occurring again.

To comply with the duty, employers should:

- Consider the risks of sexual harassment occurring,
- Consider what steps they could take to reduce those risks,
- Consider which steps it would be reasonable to take, and
- Implement those steps.

Whether the steps taken by an employer were reasonable is an objective test with consideration of factors including the size and nature of the employer, the risks present in the workplace, the types of third parties that workers may have contact with and the likelihood of workers coming into contact with such third parties.

The EHRC guidance makes it clear that there is no prescribed minimum and what is reasonable will vary from employer to employer. As such, what is a reasonable step for a large employer such as for a big bank or law firm to take, is likely to be very different to what would be considered to be reasonable for a small primary school or single academy trust. Nevertheless, it must be borne in mind that schools and MATs are ordinarily subject to the general public sector equality duty, which does not apply to private employers, and because of that they must not take the new preventative duty lightly.

The new duty only applies to sexual harassment, it does not cover harassment related to any other protected characteristic (including relating to sex).

## THIRD-PARTY HARASSMENT

The Equality Act 2010 does not apply to third party harassment but the preventative duty does. Accordingly, employers are required to take reasonable steps to prevent sexual harassment of workers by third parties, such as clients and customers. In a school context this may mean contractors, visitors, pupils or even parents.

The guidance suggests that employers can take steps to prevent third-party harassment by:

- Encouraging workers to report third-party harassment,
- Adopting a zero-tolerance policy to third-party harassment and communicating that to staff, and
- Developing a protocol to manage reports of third-party harassment.

Your Behaviour Policy will likely cover any such conduct by pupils, but you should consider whether you have adequate policies in place to cover potential sexual harassment by other third parties such as consultants, contractors, visitors and parents.

## CONSEQUENCES OF NON-COMPLIANCE

The EHRC has the power to take enforcement action against an employer who breaches the preventative duty, including but not limited to investigating an employer and obtaining an injunction.

The new legislation also allows Employment Tribunals to uplift compensation by up to 25% where it finds that sexual harassment has occurred and the employer cannot show that it complied with the new duty. However, a claimant cannot bring a claim for a breach of the preventative duty alone, the uplift in compensation is parasitic on a successful harassment claim.

## PRACTICAL STEPS

The EHRC have created an [eight-step guide to prevent sexual harassment at work](#). These steps are:

1. **Develop an effective anti-harassment policy.** This policy should be clearly communicated and consistently applied.
2. **Engage your staff.** Educate staff as to what is sexual harassment and how to avoid it and maintain an open-door policy.
3. **Assess and take steps to reduce risk in your workplace.** Undertake a targeted risk assessment as to likely harassment risks.
4. **Reporting.** Have a clear reporting channel and enforcement response.
5. **Training.** Train staff to understand what constitutes sexual harassment and what steps they can take to prevent it and have periodic refreshers on this training.
6. **What to do when a harassment complaint is made.** Act immediately to resolve the complaint whilst considering how the complainant wants it to be resolved.
7. **Dealing with harassment by third parties.** Treat this as seriously as harassment by non-third parties.
8. **Monitor and evaluate your actions.** Regularly evaluate the effectiveness of the steps put in place and change them where needed.

[Acas guidance](#) suggests additional steps an employer could take to prevent sexual harassment. These include:

- Encouraging staff to report situations where they felt at risk, even if nothing happened.

- Setting standards of behaviour for work social events.
- Having someone at a senior level monitor whether the employer is taking steps to prevent sexual harassment.

Every workplace will have their own specific risks which requires a tailored approach to prevent sexual harassment. Employers should use the practical steps mentioned as a starting point and build on them considering the vulnerabilities their workplace has.

## EMPLOYMENT RIGHTS BILL

It is worth noting that the [Employment Rights Bill](#), introduced to Parliament on 10 October 2024, seeks to extend the duty to take reasonable steps to prevent sexual harassment to a duty to take all reasonable steps. Employers should therefore ensure their risk assessments are thorough so that all steps can be put in place in anticipation of this more onerous duty.

## CLOSING REMARKS

We envisage that in the absence of a risk assessment, schools and MATs will struggle to show that they have complied with the preventative duty. It should be further noted that a risk assessment is not a document completed once and filed away. It is a document that should be revisited regularly, and in particular in the event that circumstances change, for example where there is an incident or an allegation made that requires the schools to reassess the risk.

Policies and procedures should be reviewed and updated as necessary, and staff should be given training about all unacceptable conduct at work and not just sexual harassment.

A culture of openness should be encouraged, and any complaint about sexual harassment should be taken seriously and promptly investigated. Investigation frameworks should be in place.

A zero tolerance approach to sexual harassment should be clearly communicated to all stakeholders.

*If your school or MAT require advice and assistance in relation to the new duty to prevent sexual harassment, including with regard to updating policies and procedures or supporting with an investigation, or if you need support with any other school HR or employment law related matter please contact Winckworth Sherwood's dedicated Schools HR helpdesk on [SchoolsHR@wslaw.co.uk](mailto:SchoolsHR@wslaw.co.uk) or 0345 026 8690.*