

Insights

THE SEXUAL HARASSMENT PREVENTATIVE DUTY IS NOW IN FORCE - WHY IT IS NEEDED

UK HR TWO MINUTE WEEKLY

Oct 31, 2024

SUMMARY

This week we mark the introduction on 26 October of the duty to take reasonable steps to prevent sexual harassment, and consider a few recent cases showing that this is a workplace issue that refuses to go away

Last Saturday marked the coming into force of the preventative duty relating to sexual harassment.

Sexual harassment is an area of workplace misconduct that, despite cultural shifts, DEI initiatives and statutory/employer intervention and action, remains a problem.

As an illustration of the kind of conduct which is still occurring in UK workplaces, we set out just a few examples of very recent cases:

- A young female employee at a large employer experienced unwanted sexual advances and comments by another employee shortly after starting employment. She complained to her manager who, rather than taking action, told her to “take it as a compliment”. The harassment continued by multiple other employees, including a deputy manager touching her inappropriately and attempting to hug her. She was subjected to a number of highly sexualised comments about her sex life, underwear and appearance. Eventually the employee resigned and brought a number of claims against the employer, including sexual harassment. She was successful. The tribunal was deeply concerned that senior managers did not step in to prevent harassment, had not been trained on the employer’s anti-harassment policies, and had not informed managers of their duty to create an environment where harassment was not tolerated.
- A Rugby club President was banned from the sport for three years by the sport’s regulator as a result of his conduct at a summer fundraising party. He harassed a young female employee by

repeatedly trying to unfasten her bra, eventually succeeding. He subjected the same employee, both at the party and other occasions, to grossly inappropriate sexual comments. When this was raised with him he said he was “having a laugh” and that it was “just banter”. The female employee was traumatised by the whole experience.

- A tribunal awarded an employee over £350,000 after she had been harassed over a twelve-month period by her mentor. This was the second consecutive employer at which she had experienced sexual harassment. The employee was again traumatised, leaving the UK for a period to recover. The employer refused to deal with matters informally through deployment as requested by the employee, then initially ignored her formal grievance. The harasser was treated leniently, despite the evidence against him. He was allowed to resign before the disciplinary procedure against him concluded, and senior management refused to apologise to the employee at the tribunal hearing. A 15% uplift was applied as a result of breaches of the ACAS Code on grievances and disciplinary procedures.
- At a small business, a female employee was given a bear hug by a colleague and was inappropriately touched by him. After she complained, the colleague in question made derogatory remarks about her, including swearing at her. The employer sided with the harasser and dismissed the female employee. She brought a successful claim for sexual harassment and was awarded over £30,000.
- A junior secretary was sexually harassed on multiple occasions. This included inappropriate text messages, graphic discussions about her manager’s personal life, comments about her appearance, and the use of offensive language with sexual connotations. She raised a grievance but was accused by the individuals conducting the grievance of “dressing inappropriately” and “flaunting herself” on social media, with one individual referring to her as a “Love Island reject”. She resigned after seven weeks and brought a successful claim for sexual harassment.

All these cases took place over the past two years, most over the last few months, and both tribunals and regulators have seen a significant increase in sexual harassment complaints this year. They suggest that the issue is not that employers are unaware of the risks/exposure, but that individual rogue employees and managers either knowingly break the rules or are not receiving sufficient training on their duties and how to deal with complaints. There also appears to be a lingering tendency for employers to protect managers and/or fail to take appropriate action at the expense of junior staff. It may be that the high bar and harsh penalties of the preventative duty will lead to a better understanding at all levels of duties and obligations, and a consequent reduction in incidences of harassment in the workplace. At present, as the cases above illustrate, sexual harassment continues to be a major issue.

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