

Insights

SEXUAL HARASSMENT - THE PREVENTATIVE DUTY AND RISK ASSESSMENTS

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SUMMARY

Rather than our usual Two Minute Monthly employment law round-up, we are posting for March 2025 a blog by Partner Katherine Pope on the nature and purpose of risk assessments in complying with the sexual harassment preventative duty.

The sexual harassment preventative duty came into force on 26 October 2024. For the first time, employers are now subject to a proactive and anticipatory duty to take reasonable steps to prevent sexual harassment in the workplace.

The duty extends to acts of harassment by third parties (for example customers, clients and members of the public), and is backed up by the threat of a 25% tribunal award uplift and potential enforcement by the Equality and Human Rights Commission (**EHRC**). The EHRC has published updated technical guidance (**Guidance**) and a basic 8-step guide for employers, both of which emphasise the importance and benefit of risk assessments.

Noting that the duty is preventative and anticipatory, the Guidance recommends that risk assessments are undertaken by employers (a) to assess the risks posed to employees in work events/situations and (b) to consider steps that can be taken to reduce those risks. Although risk assessments are not a requirement of the Equality Act 2010, the Guidance states "*An employer is unlikely to...comply with the preventative duty unless they carry out a risk assessment.*" This is reinforced by other parts of the Guidance and the 8-step guide.

Risk assessments may be new territory for employment lawyers and HR practitioners. The following may be a helpful starting point:

- There is no prescribed form of risk assessment. The Guidance suggests that existing risk management frameworks can be used. For example, an organisation's health and safety risk assessment documents could be used as a template.

- Consider whether a single document is sufficient to assess multiple risks, or whether there should be an “umbrella” document with separate assessments for specific events.
- The Guidance lists the kinds of risks that organisations should address. Risk factors include alcohol, out of hours working, events outside the office, socialising after work and social media contacts between employees. The practical risks seem to focus on:
 - alcohol;
 - external events/after work socialising; and
 - third parties.
- The Guidance also considers matters that might lead to an increased risk. These include:
 - a male dominated workforce;
 - gendered power imbalances (e.g., if most senior managers/leaders are male and junior employees female);
 - individuals working alone at home – this might seem counter-intuitive, but during the Covid lockdowns of 2020-2022, with a large proportion of the population either working at home or engaging in social distancing, there was an *increase* in complaints of sexual harassment. An individual working alone may find it harder to deal with online harassment; and
 - working alone with third parties, such as clients/customers or members of the public – a lone receptionist in a hotel would be an example.
- Although the steps an employer takes may depend on its size and resources (the Guidance is clear that “reasonable steps” will vary from employer to employer) there is no such qualification for risk assessments. The “small employer” case study in the Guidance still includes a risk assessment, suggesting that employers of any size are expected to take such an approach.
- The assessment must consider how to tackle or even eliminate the risks identified. The Guidance is clear that, for example, the following should be reviewed/identified:
 - reporting mechanisms and whether employees know how to complain;
 - whether managers know how to deal with complaints;
 - how risks can be mitigated – for example hiring a private room at an external venue to reduce risk from third parties; and
 - any other steps that employer can take to reduce risk.

- The Guidance emphasises the importance of communications with staff, that staff know about and are trained on policies and procedures, that staff know what sexual harassment is, how to complain and to whom.
- The case studies in the Guidance are valuable sources of assistance in terms of steps to consider.
- Risk assessment documents should be reviewed regularly, particularly if new or additional risks are identified, for example following an incident or event that merits a review.
- The Guidance recommends that employers, having carried out a risk assessment, prepare an action plan setting out the preventative steps proposed for any given situation and how they will be undertaken and monitored – it is suggested that this action plan is published.
- The Guidance also suggests (as an option) appointing a designated lead individual to take responsibility for the action plan and preventative duty.

KEY TAKEAWAYS

It is clear from the Guidance that, whatever form the risk assessment takes, it must:

- consider and list relevant risks
- specify situations that bear the highest risks
- set out how those risks can be addressed and/or eliminated

Conducting such an assessment will help employers comply with the preventative duty, by ensuring that policies/procedures, training and other measures are based on an assessment of risk. This gives employers a greater chance of avoiding any uplift to compensation or independent action by the ECHR.

As any risk assessment should also consider the risk of harassment by third parties, this will be good preparation for the anticipated change in the law under the Employment Rights Bill, when claims in respect of harassment by third parties are likely to become possible in 2026.

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MEET THE TEAM



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