

Briefing Note on Preventing Sexual Harassment at Work (Worker Protection Act 2023)

The legal definitions of sexual harassment are set out in the Equality Act 2010.

Sex-based harassment is unwanted conduct “related to sex”, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

It is also harassment to treat someone badly because they have rejected or submitted to unwanted conduct that is of a sexual nature or related to sex. For example, failing to promote an employee because they refused a manager’s sexual advances.

Note that a one-off incident can count as harassment. There does not need to be an ongoing course of conduct.

Examples of sexual harassment may include:

- Staring at someone or leering; making sexual jokes, gestures, or comments; standing too close to someone; sending explicit content or messages via text or social media; commenting on someone's appearance; unwanted physical contact, such as hugging or brushing against someone; spreading sexual rumours or gossip; discussing personal sex life or asking intrusive questions about others'; unwanted flirting or sexual remarks; taking photos at an angle to see up someone’s dress - or upskirting; making unwanted sexual advances; using professional decisions as leverage for sexual advances; and, stalking.

Intended

If unwanted sexual behaviour is **intended** to violate a person's dignity or create a hostile environment, it doesn't matter whether it actually has that effect – it is still sexual harassment.

Not intended

Even if the behaviour is **not intended** to violate a person's dignity or create a hostile environment, it can still have this effect, and is therefore sexual harassment.

Worker Protection Act becomes law from 26th October 2024

Main facts about Worker Protection Act

- It applies equally to people of any gender.
- The Act extends protection against harassment to cover all forms of unwanted conduct related to any protected characteristic (includes religious belief).
- Employment tribunals will have the power to award greater compensation to employees if employers fail to meet their new duties under the Act.
- Although sexual harassment by third parties – such as clients or customers – is not included in the act, employers can still be held liable if they fail to adequately deal with incidents or complaints from employees regarding third-party sexual harassment.

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Employers will have a duty to take all reasonable steps to prevent sexual harassment of their employees. The aim of the preventative duty is to create a safer and more respectful work environment by ensuring employers are actively working to prevent harassment before it happens.

- Employers must implement measures and policies to prevent sexual harassment, such as training, clear reporting procedures, and a zero-tolerance policy.
- Employers are expected to take practical and effective actions that are reasonable in the context of their specific workplace. This can include conducting regular risk assessments, providing appropriate training to staff, and ensuring robust reporting mechanisms are in place.
- If an incident of sexual harassment occurs, employers may be held liable if it is found that they did not take reasonable steps to prevent it.

Employee responsibilities

- To understand and follow company policies.
- To participate in any training that is offered.
- Report incidents.
- Respect personal boundaries and avoid making comments or actions of a sexual nature that could be unwelcome or offensive.
- Support a positive, inclusive culture.

Mitigating the risks

Employers need to make an assessment of risks relating to sexual harassment. By adapting existing risk management frameworks and using them to assess working practices, policies and procedures, employers should foster a preventive culture that minimises risks.

Factors to consider when conducting risk assessments could include:

- out of hours working
- remote working (meaning people are more isolated)
- the presence of alcohol
- whether sections of the workforce (e.g. management) are dominated by a particular gender
- power imbalances between employees
- attendance at events outside of the usual working environment, for example, training, conferences or work-related social events
- social media contact between workers.