

New UK Employer Duty to Prevent Sexual Harassment to Be Watered Down

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Amidst gridlock in the UK Parliament, the Worker Protection Bill (“the Bill”), an amendment to the Equality Act 2010 that was introduced to place a duty on employers to proactively protect employees from sexual harassment in the workplace, has been scaled back.

The Bill, introduced to increase employment protections following a highly critical [report](#) on the extent of sexual harassment in the workplace, has been amended in the following ways:

- Protections against harassment by third parties will no longer be introduced.
- The duty to take **all** reasonable steps has been revised to require employers to take only **reasonable steps** to prevent employees from being sexually harassed at work.

The Bill mandates that employers take proactive steps to prevent sexual harassment in its workplace, the failure of which could expose it to enforcement action from the Equality and Human Rights Commission (“EHRC”) under its existing enforcement powers and, where a claim for sexual harassment has been upheld, an Employment Tribunal would be able to grant an uplift of up to 25% in compensation.

The effect of removing the word “all” from the legislation represents a significant dilution of the new employer’s duty. Employers will have to still show that they took reasonable steps to prevent sexual harassment and so will need to treat the duty seriously, but will not be penalised (by an Employment Tribunal increasing compensation awards by up to 25%) for not taking **every** reasonable step.

The Bill now proceeds to the Report stage in the House of Lords, where it will likely move to its final passage by receiving Royal Assent. If passed, the new legislation will likely come into force in mid-2024.

How can employers prepare for the new legislation?

Currently, employers can avoid liability for sexual harassment claims by advancing a statutory defence that they took “all reasonable steps” to prevent the harassment from taking place. Recent case law has confirmed that the reasonable steps defence is a relatively high threshold for employers to overcome. The law in this respect will continue unaffected.

The introduction of this new duty on employers, together with the potential for an EHRC enforcement action and a compensation uplift of up to 25%, represents a change of emphasis toward preventative action, and means that employers may consider implementing the following measures to mitigate against this and promote a more inclusive working environment:

- Regular and high-quality training on harassment in the workplace
- Written Equal Opportunities Policies
- Written Anti-Harassment and Bullying Policies
- Regular reviews of HR policies to ensure the business is keeping up with UK legislation and best practices
- Preparation of a register for reporting incidents of harassment (taking into account data protection and storage requirements)

Although the Bill has been watered down, employers should be taking steps to prevent sexual harassment in the workplace by clearly demonstrating that they have a zero-tolerance approach to harassment. This ensures an employer is mitigating against the risk of not only potential monetary penalties and potential financial and reputational damage associated with the same, but a safer environment for all employees.

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