

Newsletter - Employment Law Update September 2024

1. Employer's New Duty to Prevent Sexual Harassment

From October 2024 new legislation (s40A Equality Act 2010) places greater responsibilities and legal requirements on all Employers, to take proactive steps to prevent Sexual Harassment at work.

Managers will need to take steps to demonstrate that they are preventing the problem. This doesn't simply mean having an up-to-date Policy and Procedure, but actively taking steps to reduce the risk of harassment. However, the starting point needs to be for Managers to ensure that the Organisation's procedures are fit for purpose.

Current guidance on the ACAS Website ([Preventing sexual harassment - Sexual harassment - ACAS](#)) sets out the following requirements for the Organisation's Anti-Harassment policies and procedure to follow:

- The policy should provide a range of options for reporting sexual harassment, depending on who the person who has been subject to harassment feels comfortable with.
- The policy should provide a range of informal options for dealing with sexual harassment.
- The policy should contain a formal complaints procedure for the Employee to use if they wish.
- The formal procedure should allow Union representation.
- The procedure should be clear about when disciplinary action might be needed.
- Only one investigation needs to be conducted into both the Employee's complaint and any subsequent Disciplinary action.
- The policy should contain details of help and support available to the person who made the complaint.
- Someone who's been sexually harassed will be given paid time off to get help with any resulting physical or mental health problems.

In addition, specific guidance notes have been developed by the Equality and Human Rights Commission for all Employers. In terms of how they apply, the following need to be taken into consideration:

- Employers will need to review existing procedures, including defining what constitutes harassment, steps to take should the problem arise, protection the Organisation will provide to those reporting it, and sanctions against offenders. As a result, a Policy and Procedure that is specific to the needs of the Organisation should be drafted.
- Staff should be consulted on the draft policy and procedure, to get their suggested adjustments, as well as commitment to the document. If the Organisation has a collective bargaining arrangement with one or more Union, they too should be consulted as part of the process of updating procedures.
- The procedure should be issued to Directors and staff and displayed in public areas.
- All staff should either attend a briefing session regarding how the new/updated policy and procedure works, or be required to read the document and sign it to confirm that they understand and will comply with it.
- This will need to be repeated on an annual basis to ensure that the training doesn't become outdated. Provision of annual training would enable an Organisation to demonstrate that it has taken reasonable steps to prevent the problem. This can provide the Organisation with a valuable defence if it has to defend a claim of Sexual Harassment at the Employment Tribunal.

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- The Policy and Procedure should include a simple and user-friendly reporting process if problems occur, as well as set out what action will be taken against offenders. For example, Employees who are found to have committed acts of Sexual Harassment would be accused of Gross Misconduct.

It is important to ensure that procedures, and the way that they are implemented, are appropriate to the size of the organisation and its resources. There is no point in developing elaborate procedures that are simply unworkable. There are no particular criteria or minimum standards for Organisations when implementing their anti-harassment procedures. They must be practical and, most importantly, workable for the size of the organisation.

From October 2024, Employers could face a surcharge of 25% on top of any compensation awarded to an Employee who successfully makes a claim of Sexual Harassment at an Employment Tribunal, if Managers cannot demonstrate how they have complied with the new rules.

However, Employers that have taken all 'reasonable steps' to implement workable procedures will have a defence against claims at the Tribunal for Sexual Harassment, under s109 of the Equality Act 2010.

Steps we strongly recommend you take:

- 1 Managers to review and customize the Anti-Harassment Policy and Procedure to the needs of your organization.
- 2 Consult with staff, and where necessary unions, on the contents of the procedure.
- 3 Conduct training / information events for all engaged with the organization in whatever context.
- 4 If, for genuine reasons, some people cannot attend such an event, ask them to read and sign a copy to confirm that they understand and will comply.
- 5 Get a training record signed to say that they have had this information and understand how it works.
- 6 Review the policy and procedure on an annual basis to ensure that it is relevant.
- 7 Repeat this training / information session on an annual basis to ensure that it is up to date.
- 8 Ensure that you have information to third parties, such as the public, suppliers, contractors, etc. are aware of this policy and procedure.

We have a sample policy as a starting point; however, it is not the finished article! This can be used to develop and customise a Policy and Procedure that suits your organisation.

WE WILL SEND THIS OUT SEPARATELY BY EMAIL, AND IT WILL BE ON OUR WEBSITE

PROFILE

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