

Employer duty to prevent sexual harassment: what changes on 30 October 2026?

On 30 October 2026 the duty to prevent sexual harassment will become more onerous for employers who will be required to take all reasonable steps to prevent it from happening at work. On the same date, employers will become liable for claims of discriminatory harassment committed by third parties, including sexual harassment.

What is the current position?

Since October 2024, employers have been subject to a positive duty to take some, but not all, reasonable steps to prevent sexual harassment of workers by co-workers or third parties.

In this context, “sexual harassment” means unwanted conduct of a sexual nature which has the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. The duty covers sexual harassment occurring “in the course of employment”. Naturally, this covers sexual harassment occurring within the workplace, but it also covers harassment occurring at work-related events such as conferences, off-sites, parties or leaving drinks. Importantly, the duty requires employers to anticipate the situations when workers might be exposed to sexual harassment and take action *in advance* to prevent it from happening. Employers must not wait until an incident has occurred before taking action.

What is changing?

On 30 October 2026, two important changes will come into force:

- The preventative duty will become more onerous and require employers to take **all** reasonable steps to prevent sexual harassment.
- Employers will become liable for the harassment of their staff by third parties, such as customers, clients, contractors and members of the public. This will cover sexual harassment *and* all other forms of discriminatory harassment under the Equality Act 2010.

These changes have significant consequences for employers. First, it will become much harder for employers to discharge the duty to prevent sexual harassment, as they will need to show that they had done *everything* that was reasonable for them to do. In particular, a lot will be expected from large and well-resourced employers and from employers where sexual harassment is especially prevalent. Second, liability for third party harassment significantly widens an employer's exposure to claims of sexual harassment.

When will a preventative step be “reasonable”?

When the duty to prevent sexual harassment first came into force in 2024, the EHRC updated its detailed technical guidance on [Sexual Harassment and Harassment at Work](#) (the **Guidance**) to address the new duty and how to approach compliance. This Guidance is due to be updated again to reflect the upgrade to the duty coming into force on 30 October 2026.

To complement the detailed Guidance, the EHRC also published a more user-friendly [8-step guide for employers](#) which set out the steps expected from most employers. Again, this guide is due to be updated to reflect the imminent change in the law.

The Guidance explains that what is “reasonable” will vary from employer to employer. That said, whether or not a step is reasonable is assessed against an objective standard, rather than just by what the employer thinks.

Factors which will be relevant to whether a step is reasonable include, but are not limited to, the following things:

- the employer’s size and resources;
- the sector it operates in;
- the working environment;

- particular risks present in the workplace; and
- the likelihood of workers coming into contact with third parties, and the types of third parties that they might come into contact with.

Taking these factors into account, an employer must consider the risks of sexual harassment arising in the course of employment and the different steps that it could take to prevent it from happening. It must then assess which of those steps would be reasonable for it to take and, in future, implement *all* of them. When making this assessment, the time, cost, potential disruption and likely effectiveness of the proposed steps are all relevant considerations. However, it is important to remember that it may still be reasonable to take a step even if it might *not* be effective in preventing the harassment.

What steps should employers consider taking to discharge the duty?

The Guidance and 8-step guide recommend that employers should take the following preventative steps as a minimum:

- **Have effective policies in place.** Employers should have separate policies for sexual harassment as distinct from other forms of harassment (or have one clearly

delineated policy). Such policies should also cohere with other relevant policies such as disciplinary, social media and health and safety policies. By now, most employers will have appropriate policies in place, but these should be reviewed and updated before 30 October 2026 to reflect the imminent changes to the law. Policies should also be reviewed after any significant incident of sexual harassment and to address any trends apparent from internal complaints, staff surveys and/or exit interviews.

- **Engage with staff.** Employers are encouraged to engage with workers using a variety of methods to identify where the risks lie and whether the steps taken are working. This could be done in a variety of ways, for example, in round table discussions or an anonymous staff survey. Now is the time for employers to refresh any such engagement to ensure that the steps taken reflect the views of staff. Employees should also be made aware of the relevant policies and understand how they work and the consequences of breaching them.
- **Assess and take steps to reduce risk.** A risk assessment is central to compliance with the preventative duty. Employers must interrogate the risk of sexual harassment within their organisation and take the steps that could be taken to eliminate or minimise such risks. Typical risk factors include: job insecurity, power-imbalances, lone working, the presence of alcohol, customer-facing

duties, gender imbalanced workforces and workers being placed on secondment. Importantly, employers need to review previous risk assessments and consider whether its conclusions still stand or whether a further risk assessment is needed to identify further reasonable steps. This is likely to be needed where there have been changes in the workplace or industry, in light of new feedback from staff or where there have been incidents of sexual harassment. For example, if an employer has identified a trend of sexual harassment complaints after events involving a free bar, consideration should be given to whether a reasonable step would be to restrict the amount of alcohol on offer or to move away from events centred around alcohol altogether.

- **Reporting harassment.** Staff should understand how to raise concerns and multiple channels for reporting should be offered, including the option to report anonymously. Employers should also consider other ways to detect harassment, for example, via informal one-to-ones, sickness absence records, return to work meetings and exit interviews. Where an employer has received no reports of sexual harassment, this does not necessarily mean that sexual harassment is absent – it may be an indicator that the reporting and detection mechanisms are not working. Now would be a good time to review existing reporting mechanisms and check that staff understand how to report and feel empowered and safe to do so.

- **Training.** All staff should receive training on workplace sexual harassment and how to report it. This training should cover both prohibited conduct and encourage staff to engage in respectful and safe behaviours at work. Such training should also be tailored to the sector and audience, with more comprehensive training provided to those in leadership and HR roles. Training programmes should be reviewed regularly, and refresher training should also be offered, ideally in advance of 30 October 2026.

- **Dealing with complaints appropriately.** Employers must take prompt action when a complaint is made, and the matter should be kept confidential. Other factors to consider include protecting the complainant and witnesses from harassment or victimisation. Employers must bear in mind their duty of care to employees who have been accused of harassment and are under investigation. A good response includes taking appropriate and consistent disciplinary action against the perpetrators of harassment. Those who engage in unlawful conduct should not be unfairly protected, rewarded or promoted, regardless of their importance to the organisation. Where the perpetrator is a third party, in some cases this may mean ending the relationship with them.

- **Dealing with harassment by third parties.** Harassment by third parties should be taken just as seriously as

harassment by a colleague – and from 30 October 2026 employers will be liable for such harassment if they have not taken all reasonable steps to prevent it. Employers need to build in an assessment of third-party risks into their risk assessments and have appropriate reporting mechanisms in place.

- **Monitor and evaluate.** Employers must keep the steps taken under review and take further preventative steps as needed – this is particularly important given that more will shortly be expected from employers. For example, if a previous risk assessment had identified preventative steps which the employer decided *not* to take forward, this should be reviewed before the upgraded duty comes into force. If the step in question is reasonable, then it must be taken now or the duty will not have been met.

There are, of course, many other steps that employers could consider taking to help discharge the duty. Australia has had a similar duty to prevent in place since 2022 and the Australian Human Rights Commission has issued extensive [guidelines](#) on the steps needed to discharge that duty. Some suggestions are set out below.

- Require senior leaders to be involved in the development

and oversight of a compliance plan, including regular reviews of whether the chosen steps have been effective.

- Require senior leaders to lead on workplace communications about the duty, to act as role models and to be responsible and accountable for compliance with the duty (with consequences for failure built into their employment contracts and remuneration packages).
- Encourage staff to call out both positive and unacceptable behaviour and recognise those who do so, for example, in appraisal and promotion processes.
- Make support options available for staff. This can include both internal support options (e.g. a named member of HR or a mental health champion) and external support options (e.g. an Employee Assistance Programme or free advice line).

What are the consequences of breaching the duty?

Enforcement action by the EHRC

Where an employer fails to comply with the duty (or there is a suspicion that this is the case), the EHRC will be able to take enforcement action against them. This includes powers to:

- investigate the employer;
- issue an “unlawful act notice” which confirms that the employer has breached the duty and requires it to prepare an action plan setting out how it will remedy the breach and prevent future breaches;
- enter into a legally binding agreement with the employer to prevent future unlawful acts; and/or
- ask the court for an injunction to restrain an unlawful act.

The EHRC’s enforcement action is in the public domain, with details of their current and past investigations held on their [website](#).

This raises an important point for employers to note when it comes to settling claims of sexual harassment. Employers are not allowed to use settlement agreements to gag workers from

blowing the whistle about various forms of malpractice. The EHRC is a “prescribed body” for whistleblowing about breaches of equality law, which means that workers are entitled to make whistleblowing disclosures to them about such breaches. Therefore, even after a settlement agreement has been signed, a worker will remain entitled to blow the whistle to the EHRC about a breach of the duty to prevent sexual harassment which, in turn, could lead to enforcement action attracting negative publicity.

Uplift to compensation

Where an individual brings a claim against their employer and the Employment Tribunal finds that they were subjected to sexual harassment it must consider whether, and to what extent, the employer has breached the legal duty to prevent sexual harassment. Where a Tribunal concludes that the employer has breached the duty, it may award an uplift to the compensation award. Any uplift must correlate to the extent of the employer’s breach but may not exceed 25%.

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.