Employers liable for harassment of staff by third parties from 30 October 2026

On 30 October 2026, the Equality Act 2010 will be amended to provide that employers must not permit third parties to harass their staff. Employers will be deemed to have "permitted" third-party harassment where a third party harasses an employee in the course of their employment and the employer has failed to take all reasonable steps to prevent it.

When will an employer be liable for third party harassment?

Employers will be liable where they fail to take all reasonable steps to prevent third parties from harassing staff in the course of their employment. Liability will arise from the first instance of harassment, regardless of whether the employer knew about it at the time.

In other words, to avoid liability for third-party harassment, an employer must anticipate risks and take all reasonable steps to prevent the harassment from occurring in the first place. If harassment nevertheless occurs, the employer will not be liable provided it can demonstrate that it has taken all reasonable steps to prevent it. What is "reasonable" will vary depending on various factors such as who the third party is, the degree of influence the employer has over their behaviour and how serious the risk was.

This liability is separate to the positive duty on employers

to take reasonable steps to prevent sexual harassment of staff, including by third parties ("the preventative duty"). The preventative duty will be upgraded on 30 October 2026 to require employers to take *all* reasonable steps to prevent sexual harassment – you can read more about that development here. Where the preventative duty is breached, an Employment Tribunal may uplift compensation in a relevant claim by up to 25%.

Therefore, where an employee is harassed by a third party they will be able to bring a claim against their employer seeking compensation for financial losses and injury to feelings (which is uncapped). Separately, where that harassment is sexual, they may also seek an uplift to the compensation of up to 25% to reflect the breach of the preventative duty.

What is a "third party"?

In this context, a third party is defined as anyone other than the employer itself or an employee of the employer. Under the Equality Act 2010, "employee" has a wider meaning than is usually the case. It also captures workers and potentially other contractors who are obliged to perform work personally and who are not permitted to sub-contract.

Therefore, "third party" may cover:

- Contractors who are not obliged to provide personal service.

- Agency workers.
- Clients and customers.
- Professional counterparts from other organisations.
- Work experience students or certain types of intern.
- Suppliers.
- Tradespeople.
- Visitors to the employer’s premises.
- Tenants occupying a different part of the same premises as the employer.
- Members of the public.

This list is non-exhaustive. Depending on the employer’s working environment, there may be more third parties.

When will harassment be “in the course of employment”?

“In the course of employment” means more than just acts committed in the workplace during normal working hours. It covers situations where the employee is working elsewhere, for example, from home or at a conference.

In some circumstances it may include other situations outside the workplace and working hours such as work-related travel or work-related social events. For example, it could potentially extend to an employee who is harassed by a client at a networking event held at a hotel in the evening, or an employee harassed by a member of the public at a colleague's leaving drinks held in a pub. It could also cover virtual harassment, for example, over a Teams meeting or through messages on WhatsApp or a social media platform.

Which types of harassment are covered?

All types of discriminatory harassment under the Equality Act 2010 are covered as follows:

- **General harassment:** this is any *unwanted conduct* related to the protected characteristics of age, disability, gender reassignment, race, religion or belief, sex or sexual orientation and which has the *purpose or effect* of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. Note that although the protected characteristics of pregnancy and maternity and marriage and civil partnership are not covered, it will often be possible for someone with those characteristics to frame a harassment claim by reference to other protected characteristics.

- **Sexual harassment:** this is any *unwanted conduct of a sexual nature* which has the *purpose or effect* of either violating the victim's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

- **Less favourable treatment:** this covers less favourable treatment of someone because they have previously submitted, or refused to submit, to sexual harassment or harassment related to sex or gender reassignment.

When considering whether conduct had the effect of violating dignity or creating the relevant environment, various factors will be taken into consideration, including the employee's own perception of the conduct, the surrounding circumstances and whether it is reasonable for the conduct to have had that effect. This introduces an element of objectivity into the assessment and ensures that conduct will not necessarily amount to harassment simply because the individual perceives it to be offensive.

What reasonable steps can employers take to prevent third-party harassment?

There is no prescribed list of preventative steps that will mean an employer has done enough to escape liability. Rather, the steps that are reasonable to take will vary according to

the size and sector of the employer and the type of work performed by staff. The starting point is to carry out a thorough risk assessment which considers how, and when, staff are interacting with third parties and who those third parties are. In relation to each scenario, the employer should consider what type of harassment might occur, whether the risk is low, medium or high and what steps might be available to combat that risk and whether it is reasonable to take them.

As part of this process, the employer should also consider whether there are any factors which heighten the risk, for example, particular job roles, tasks or events or particular protected characteristics. It would also be sensible to consult with staff to take their views on the risks they face. Records of the risk assessment and staff consultation should be kept, as should records of all the steps that are subsequently taken.

There are some core measures that are likely to be reasonable for most employers to take.

- **Policy and training:** Employers should ensure that their staff-facing harassment policy addresses third-party harassment, explaining what it is, encouraging staff to report it, setting out the different reporting channels and outlining how the employer will respond. Staff training on harassment should also cover third-party harassment – both how staff should report third-party harassment they experience and ways to intervene if they witness it happening. Additional training should be given to managers.

- **Put appropriate safeguards in place for staff:** Depending on the outcome of the risk assessment, employers should also consider whether additional measures are needed to minimise the risk of harassment. For example, an employer could decide to pay for transport home for staff when working unusually late or after work-related events where alcohol has been consumed. Or the employer could have a policy of not allowing an employee to be put in a potentially high-risk situation on their own. In certain types of workplaces, it could also include measures such as installing a safety alarm or CCTV.

- **Notify the third party of the expected standards of behaviour:** Where possible, the employer should notify third parties that they must not harass their staff and the consequences of doing so. How this is done will depend on who the third party is. For example, an office-based employer might use a physical notice for visitors to the premises and a recorded message at the start of a telephone call with a member of the public. For contractor or supplier, this might instead be achieved via the inclusion of a contractual term in the commercial contract. For a self-employed consultant or an employee of a third-party company (e.g. a secondee) who is working alongside the employer's staff on a regular basis, it might involve the provision of training. Employers may also wish to create a public-facing policy which could be given to relevant third parties and placed on its website.

- **Investigate complaints:** The employer should investigate all reports of third-party harassment promptly and take appropriate action. This may involve notifying the third party's employer, regulator and/or the police of the allegations. Where allegations are upheld, the employer may need to take further action such as banning the third party from its premises or terminating its contractual relationship with them.

- **Keep under review:** The employer should keep all risks and steps under review and re-evaluate on a regular basis (e.g. annually) and again after any material changes to the workforce or after any complaints of third-party harassment.

What does this mean for employers?

The reintroduction of liability for third-party harassment is one of the most important reforms brought about by the Employment Rights Act 2025. It significantly widens an employer's exposure to claims of discriminatory harassment. For employers operating in sectors where staff frequently come into contact with third parties (e.g. the transport, retail and hospitality sectors), that risk is heightened even further. However, the new provisions are relevant to employers across all sectors, including those whose employees have only

occasional contact with clients, customers, suppliers or other third parties.

The key message is that employers must take a proactive approach. Rather than simply responding to incidents of harassment when they occur, employers must now anticipate risks and implement appropriate preventative measures. Although employers cannot control the behaviour of third parties, they can take reasonable steps to minimise the risk of their staff being subjected to unlawful harassment.

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.