Rise in sexual harassment concerns: how can employers prepare for the Employment Rights Bill?

Recent research shows a 39% increase in sexual harassment concerns since the introduction of the "duty to prevent" sexual harassment in October 2024. With the Employment Rights Bill set to make that duty even more onerous, we explore the steps employers should take to put themselves in the best position to ensure compliance with the enhanced duty. We also consider other changes in the Bill relevant to sexual harassment at work.

As recently published on Law360, the volume of calls to ACAS about sexual harassment concerns has increased by 39% so far this year. According to figures obtained by Nockolds, ACAS received 5,583 calls in the first half of 2025 compared to 4,001 in the first half of 2024.

This increase is significant following the changes made to the legal duties on employers to prevent sexual harassment in October 2024, and gives an important insight into rising employee awareness of their employer's responsibility to protect them.

What has led to this change?

In October 2024, the Equality Act 2010 was amended to

introduce a duty on employers to take reasonable steps to prevent sexual harassment of their employees at work. This applies both to potential harassment from other workers and from third parties (such as customers or clients). The change sits alongside the pre-existing prohibitions against sexual harassment and related less favourable treatment, and places a proactive requirement on the employer to prevent their staff being subjected to unwanted conduct of a sexual nature in the course of their employment.

Failure to comply with this duty may lead to enforcement by the Equality and Human Rights Commission (**EHRC**) and/or an uplift of up to 25% to any related Employment Tribunal award made to the employee.

Whilst it is unclear whether the calls being made to ACAS relate directly to alleged failings on the part of employers to comply with this new duty, the significant increase in volume suggests that, at the very least, this legal change has encouraged employees to speak up about workplace harassment.

What is changing now?

As part of the widespread changes planned under the Employment Rights Bill, the employer duty to prevent sexual harassment will change from taking "reasonable steps" to taking "**all** reasonable steps". This is expected to come into force in October 2026, with further clarification of potential "reasonable steps" expected to come via regulations in 2027.

According to current guidance from the EHRC, the existing preventative duty to take "reasonable steps" requires

employers to conduct a tailored risk assessment, anticipating when their workforce may be at risk of sexual harassment and identifying steps that are reasonable for them to take to prevent it. The test of what is 'reasonable' will be objective and consider factors such as the size and resources of the employer, the nature of the working environment (including exposure to third parties), and any concerns raised by the workforce or responses to previous incidents.

Under the new legislation, the employer duty is being 'upgraded' to mean that employers must show not just that they took reasonable steps, but that they took all of the steps which were reasonable for them to take. On a strict reading, this means that businesses will need to justify why any steps which were not taken would not have been reasonable, and that this 'reasonableness' assessment may be more open to challenge by employees.

It remains to be seen how Tribunals will treat this change, in particular the extent to which they will scrutinise commercial decisions made by the employer when determining what is reasonable for their workplace. However, it is expected that the approach will broadly mirror that taken to the existing "all reasonable steps" defence available to employers in response to acts of discrimination by employees, as set out in the factsheet produced by the Department for Business and Trade. Particular attention will therefore be paid to the content and regularity of training, whether the employer had comprehensive policies in place (and whether those policies were enforced, including through disciplinary action), and what actions were taken in response to any complaints of harassment from staff.

What does this mean for employers?

In preparation for this new duty, employers should therefore now be considering what steps they have taken to prevent sexual harassment, if there any additional steps which might be reasonable for them to take, and be ready to defend not taking any steps which are identified but not considered viable.

Whilst employers may understandably feel apprehensive about scrutinising their own approach in this way or highlighting steps that they have chosen not to take, failing to document any learnings or the rationale for business decisions is likely to leave more room for employees to challenge whether all reasonable steps have been taken to protect them.

Practical steps for employers to take now could include:

- Revisiting the existing risk assessment for sexual harassment (or if none has yet been undertaken, doing so promptly).
- Reviewing where employees might be at particular risk of sexual harassment based on the sector, type of work undertaken and level of engagement with both other workers and third parties.
- Assessing the response taken to any incidents that have occurred, including any trends in complaints, appropriateness of any disciplinary actions taken, and whether any pre-emptive steps might have reduced the possibility of those incidents occurring.

- Engaging with employees or appropriate representatives at regular intervals to identify any concerns or areas of exposure, and obtaining their input on what actions they feel might protect them at work.

- Reiterating anti-harassment policies and ensuring that regular mandatory training is delivered on both policies and reporting procedures.

- Displaying signage to raise both colleague and third party awareness of the workplace not tolerating sexual harassment.

- Documenting any steps which have been identified but which have not been taken, including why those steps would not have been reasonable for their particular business to take.

How does this fit into the wider landscape?

The upgraded employer duty to prevent sexual harassment is one of numerous significant changes planned for UK employment law under the Employment Rights Bill.

Most notably in relation to sexual harassment, the latest draft of the Bill proposes to ban non-disclosure agreements (**NDAs**) which prevent employees from speaking out about harassment (including sexual harassment) and discrimination. This includes confidentiality provisions in employment agreements and settlement agreements, and is covered in more

detail in our latest update here. The Bill also will clarify that raising concerns of sexual harassment can be a protected disclosure for the purposes of whistleblowing protections under the Employment Rights Act 1996.

In addition, employers will become liable under the Bill for harassment of their employees by third parties based on other protected characteristics such as race, disability and religion, under a similar "all reasonable steps" duty. Businesses would therefore be wise to consider these other types of harassment when looking at the reasonable steps they can take to protect their staff from sexual harassment, and ensure that any changes they make comprehensively consider the risks that their employees might be exposed to in the workplace.

For a comprehensive insight into the key changes planned under the Employment Rights Bill, please join our webinar "The Employment Rights Bill: Where are we now?" on 7 October 2025.

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