

October 2024

Employment Newsletter

Harassment

The new positive duty on employers to take reasonable steps to prevent sexual harassment in the workplace comes into force on 26 October 2024. In light of the new duty, the Equality and Human Rights Commission recently conducted a consultation on proposed amendments to its technical guidance on preventing workplace sexual harassment.

The amended guidance, taking on board comments made during the consultation, has now been published and can be accessed [here](#).

Some key points:

- The guidance makes it clear that an employer is unlikely to be able to comply with the preventative duty unless they carry out a risk assessment.
- A brief eight-step guide for employers on preventing sexual harassment at work has been added, summarising the detail found in the guidance itself.
- It had been a matter for debate whether the new preventative duty was the same as the reasonable steps defence for harassment. The updated guidance states that it is different – being a “separate positive legal duty that requires employers to take reasonable steps to prevent sexual harassment of their workers”. Exactly how it is different is, unhelpfully, not specified.
- The preventative duty only applies to sexual harassment. It does not cover harassment related to a protected characteristic (including sex), nor does it apply to less favourable treatment for rejecting or submitting to unwanted conduct.
- Whether or not an employer has taken reasonable steps to prevent sexual harassment is an objective test and will depend on the facts and circumstances of each situation.
- A worker cannot bring a stand-alone claim in the employment tribunal for third-party harassment. However, the guidance makes it clear that the preventative duty does extend to requiring employers to take reasonable steps to prevent sexual harassment of workers by third parties, such as clients and customers.



Day One Right – Unfair dismissal

The Government is now proposing, under its plans to introduce ‘**day one**’ unfair dismissal rights in its forthcoming Employment Rights Bill, to allow employers to keep new hires on probation for up to six months. In and of itself, this development is no surprise. Labour’s pre-election pledge to make unfair dismissal a ‘day one right’ made specific mention of a role for probationary periods. A period of six months is in line with what many contracts of employment already have in place for new hires. What we don’t yet know is exactly how an employer’s ability to stipulate a six-month probationary period will intersect with, and potentially limit, unfair dismissal as a day one right.



New Employment Category

The government is proposing merging the categories of **employee and worker** into a single status of ‘**worker**’ with a clearer distinction from the genuinely self-employed. It will carry out a full consultation on this, as it is a big change.

The new categories are intended to remove grey areas and provide protections for workers against bogus self-employment. Employment status will be dictated by the law and the reality of the relationship, rather than what is stated by the organisation/workers.

