

EMPLOYMENT LAW UPDATE

New EHRC guidance on harassment at work

In January 2020, the Equality & Human Rights Commission (EHRC) issued new guidance on harassment at work. We set out below the key practical takeaways for employers and HR professionals.

Prevent

Why take preventative steps?

An employer may not be liable for harassment committed by its workers if it can show that it took all reasonable steps to prevent the harassment.

Taking steps *after* the harassment has occurred (such as disciplinary action) will not be sufficient for an employer to avoid liability.

What steps to take?

The appropriate steps will depend on the size of the particular employer, its resources, and other risk factors specific to that employer/industry. As a starting point, employers should consider:

- › Having clear and effective policies and procedures which are accessible and communicated regularly to workers, using a variety of channels.
- › Implementing strategies for detecting early warning signs, such as informal one-to-ones, return-to-work meetings after sickness absence, and employee surveys.
- › Offering regular training to workers on the types of harassment and victimisation.
- › Providing enhanced training for those with responsibility for conducting investigations (e.g. HR professionals) and/or disciplinary processes.

Respond

If an employer becomes aware that harassment is taking or has taken place, it should be dealt with promptly, efficiently and sensitively.

A good anti-harassment policy will set out a range of approaches for dealing with harassment, from informal solutions to formal disciplinary processes. For formal processes:

- › Roles and responsibilities should be clearly defined at the outset to maintain objectivity at each stage of the process.
- › Target timescales should be set for each stage of the process and communicated to those involved.
- › Complaints should be kept confidential while the complaint process is on-going.
- › The complainant and alleged harasser should be informed of their statutory right to be accompanied at formal grievance hearings.

Review

Dealing with harassment in the workplace is not a "one off" exercise:

- › Policies should be reviewed annually.
- › Incorporate lessons learned from complaints and other feedback from employees (e.g. via staff surveys).

Status of the guidance

Whilst the EHRC's guidance note is non-statutory, it includes a summary of the legal principles governing harassment at work. Compliance with the guidance is recommended and is likely to have a positive effect in the defence of any subsequent litigation.

If you would like any further advice or assistance on this new guidance (including on training options), please contact our Employment Lawyer, Jamie Feldman (jamie.feldman@northridgelaw.com)