

EMPLOYMENT UPDATE

Proposed new duty prevent workplace harassment

The UK Government is proposing to introduce new legislation which imposes new duties on employers to take 'all reasonable steps' to prevent sexual harassment in the workplace, including from third parties. We summarise the key points for employers and HR professionals in this note.

Background

A Government consultation on sexual harassment in the workplace ran from July to October 2019 and was designed to explore:

- › **Mandatory duty:** the possibility of a mandatory duty on employers to protect workers from harassment and victimisation in the workplace.
- › **Third-party harassment:** how to improve the position in relation to third-party harassment (e.g. from customers, clients and suppliers).
- › **Interns and volunteers:** whether protections under the Equality Act 2010 need to be extended to cover interns and volunteers.
- › **Extension of time limits:** whether there should be an extension of employment tribunal claim time limits from the current limit of three months.

Government response

Mandatory duty

The Government [response](#) to the consultation indicates that it will introduce a new duty on employers to take 'all reasonable steps' to prevent sexual harassment in the workplace.

Currently, an employer has a valid defence against liability for the actions of an employee who engages in discriminatory behaviour if it can show it has taken 'all reasonable steps' to prevent that discriminatory behaviour from occurring. See our [previous note](#) for more information. The new proposal will upgrade the 'all reasonable steps' defence to a positive [requirement](#) on employers to take action.

Third-party harassment

In 2013, the Government repealed provisions that meant employers could be liable for harassment of their

employees by third parties. The Government will re-introduce protection against third-party harassment. Whilst we await further detail on the proposals, the previous "three strikes rule" (which meant third parties could commit two acts before an employer became liable) is not expected to return.

Interns and volunteers

The protections will not be extended to interns or volunteers. The Government determined that most interns are usually covered by existing legislation and extending the protection to volunteers would create a disproportionate level of liability. However, as a matter of good practice, employers should have an anti-harassment policy covering all staff, not just employees.

Extension of time limits

Government is strongly considering extending the time limit for individuals bringing sexual harassment claims from three to six months. If the extension is introduced, it is expected to apply across all Equality Act claims.

Finally, details are awaited, but the Equality & Human Rights Commission is expected to become more involved in enforcement against non-compliant employers and will develop a statutory code of practice which complements its existing guide on sexual harassment in the workplace ([summarised here](#)).

Practical steps for employers

- › **Training:** provide diversity and anti-harassment training in the workplace.
- › **Anti-harassment policy:** ensure they have an up to date anti-harassment and equality policy.
- › **All reasonable steps:** begin to consider how they will incorporate the requirement to take 'all reasonable steps' and how they can manage the risks of third-party harassment.

Northridge is experienced in providing engaging and tailored training on this issue to workers, senior managers and HR teams. If you would like any further advice or assistance on this development, including on our training options or to update your policies and procedures, please contact our Employment Lawyer, Jamie Feldman (jamie.feldman@northridgelaw.com).