

New anticipatory duty to prevent sexual harassment at work: final EHRC guidance published

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Following [consultation launched in July](#), the Equality and Human Rights Commission (EHRC) has now published its final version of the Sexual harassment and harassment at work: technical guidance. The final version contains some amendments and additions to the draft published for consultation.

The key highlights for employers to note include:

- The final guidance makes it clear that an employer is unlikely to be able to comply with the preventative duty unless it carries out a risk assessment to identify risks and what control measures could minimise the risks. Therefore, all employers should be conducting risk assessments.
- Employers are encouraged to use the risk assessment to formulate an action plan setting out the preventative steps they will take to address the risks and how progress will be monitored.
- The list of risk factors which may give rise to allegations of sexual harassment has been updated to include out of hours working; socialising outside of work; social media contact between workers: home working and the workforce demographic.
- The guidance makes it clear that the preventative duty is a separate positive duty upon employers to take reasonable steps to prevent sexual harassment of their employees. This is different to the 'all reasonable steps defence' in the current legislation that applies to the statutory defence which will remain.
- Additional examples have been included to demonstrate what steps may be considered reasonable by employers in different sectors having regard to the risks identified. However, the guidance makes it clear that what actual steps are reasonable will be wholly dependent upon the circumstances of the employer. There is no one size fits all.
- The section on factors which may be relevant to determining whether it would be reasonable for an employer to take a step to prevent sexual harassment has been expanded to include the likely effect of taking a particular step and whether an alternative step could be more effective; the time, cost and potential disruption of taking a particular step, weighed against the benefit it could achieve; and compliance with any relevant regulatory standards (for example, standards set by the Financial Conduct Authority or General Medical Council)
- Additional paragraphs have been added to the guidance to confirm that the preventative duty extends to sexual harassment by third parties. However, it also makes it clear that workers cannot bring a standalone claim for sexual harassment by a third party in the Employment Tribunals.
- The examples of third-party harassment have been extended to demonstrate how a failure to act could be a breach of the preventative duty and also give rise to an indirect discrimination claim (including where the recipient does not share the same protected characteristic but suffers the same disadvantage).
- The guidance clarifies that the uplift for a failure to comply with the preventative duty applies to all compensation awarded to the worker under the Equality Act 2010. Therefore, compensation isn't just limited to that awarded for sexual harassment (as stated in the draft guidance).

The EHRC has also published a new eight-step guide for employers on preventing sexual harassment at work. The EHRC guidance makes it clear that whilst this is not an exhaustive list, it is intended that following the steps will help employers to comply with the new preventative duty. The eight-steps (set out below) correspond to the measures highlighted in our earlier article:

- Developing an effective anti-harassment policy.
- Engaging with staff.
- Assessing and taking steps to reduce workplace risk.
- Reporting.
- Training.
- Handling harassment complaints.
- Dealing with third-party harassment.
- Monitoring and evaluating actions.

In light of the final guidance employers should follow these steps to ensure that they are ready for when the new preventative duty comes into force on 26 October 2024.

[Find out more about our toolkit](#) →

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