

Insights

WORKPLACE HARASSMENT: KEY CHANGES UNDER THE EMPLOYMENT RIGHTS ACT 2025

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Summary

The Employment Rights Act 2025 introduces significant changes to employer obligations in relation to workplace harassment, the majority coming into force in October 2026. Together, these represent the most substantial shift in harassment law since the Equality Act 2010. Employers should act now rather than waiting for the rules to come into force.

FOUR KEY CHANGES

Enhanced Duty to Prevent Sexual Harassment

The current duty on employers to take *reasonable* steps to prevent sexual harassment (in force since October 2024) will be strengthened to require *"all"* reasonable steps to be taken. The employer will need to demonstrate that there were no further steps that could reasonably have been taken to prevent such harassment. In practice, this means having clear and up to date policies, ensuring employees are trained properly and regularly, and conducting proactive risk assessments. Reactive measures alone, such as investigating after an incident occurs, will not be sufficient.

The government will also have the power to specify in regulations the precise steps employers must take to comply with the enhanced duty, including in relation to risk assessments, anti-harassment policies, reporting mechanisms and complaint handling procedures.

Harassment by Third Parties

Employer liability for harassment by third parties including clients, customers, contractors and members of the public will be introduced across all protected characteristics under the Equality Act 2010.

An employer will be liable where a third party harasses a worker in the course of their employment unless all reasonable steps were taken to prevent this. There is no requirement for prior incidents to have occurred, or for the employer to otherwise have knowledge of the actions.

Employers in retail, hospitality, financial services and professional services face particular exposure given the prevalence of client and customer interaction, and should review client-facing protocols, third-party contracts and escalation procedures.

Limitations on the Use of Non-Disclosure Agreements (NDAs)

Clauses which seek to prevent workers from disclosing harassment or discrimination, or an employer's response to it, will be void unless they qualify as an 'excepted agreement'. This will apply across all protected characteristics under the Equality Act 2010, not just sexual harassment.

The government's recent consultation (closed July 2026) proposes that an excepted agreement will only be valid where the worker has received independent legal advice in writing, has given written consent to entering the agreement, and has a 14-day cooling-off period during which they may withdraw without penalty. Excepted agreements would only be permissible for incidents that have already occurred. Even where a valid excepted agreement is in place, workers would remain free to disclose to specified individuals and bodies, including legal advisers, regulators, law enforcement, trade union representatives, medical professionals and close family members.

Whistleblowing Protections

Sexual harassment has been added as a qualifying disclosure under the whistleblowing legislation, meaning workers who report sexual harassment are now expressly protected against detriment and dismissal. This puts beyond doubt what was previously arguable under existing whistleblowing law.

Whistleblowing policies should be updated to make clear that employees can raise concerns relating to sexual harassment safely and without fear of retaliation.

CONSEQUENCES OF BREACH

- **Compensation:** an employment tribunal can award a compensation uplift of up to 25% where it finds the preventative duty in respect of sexual harassment has been breached.
- **EHRC investigation and enforcement action,** including unlawful act notices, binding undertakings and, in serious cases, injunctions. Importantly, the EHRC can act even where no individual employee has brought a claim.
- **Greater difficulty defending claims:** employers without a proactive compliance framework will face significantly greater difficulty defending harassment claims.

- **Increased reputational risk:** greater public and regulatory scrutiny heightens the risk of reputational harm in the event of non-compliance.

KEY TAKEAWAYS FOR EMPLOYERS

- **Update whistleblowing policies.** Policies should explicitly refer to sexual harassment as a qualifying disclosure and make clear that reporters are protected from detriment or dismissal.
- **Conduct a proactive harassment risk assessment.** Identify the specific situations in which harassment may occur in your organisation – factors to consider include power dynamics, out of hours events on third party premises, alcohol, client-facing roles, and remote or lone working. Document both the risks identified and the steps taken in response. This record will be critical in any future tribunal claim or EHRC investigation.
- **Engage with staff.** Use regular one-to-ones, staff surveys and exit interviews to understand the extent and nature of any harassment risk within your organisation. An open-door culture helps identify issues early and signals that concerns will be taken seriously.
- **Review and update anti-harassment policies.** Policies should clearly define what constitutes sexual harassment and harassment related to other protected characteristics. They should also set out the consequences of such conduct and explain how employees can report concerns. Policies should be accessible, regularly reviewed, and actively communicated. They should be regularly maintained and not allowed to become “stale”.
- **Establish clear reporting mechanisms and complaint-handling procedures.** Employees should have multiple ways to report harassment, including informal and anonymous channels where appropriate. Once a complaint is made, it must be investigated promptly, sensitively and effectively.
- **Deliver regular, meaningful training, particularly for managers.** Training is one of the most important elements of the compliance framework. It should be tailored to your organisation, cover what constitutes harassment, how to handle complaints, and what bystanders can do. One-off training is unlikely to be sufficient; regularity and multiple sessions matter. Managers and senior leaders should receive more detailed training given their responsibilities. All training should be mandatory.
- **Set the tone from the top.** Senior leadership can play a valuable role in visibly championing a zero-tolerance approach. Where complaints arise, they must be dealt with promptly and effectively.
- **Assess and manage third-party risk.** Consider what measures can be put in place to reduce the risk of third-party harassment in each working environment. Practical measures should include visible reporting procedures for customer-facing staff, clear signage, contractual

obligations on third parties, and protocols for how staff should escalate incidents. Staff should know they will be supported if they experience harassment from a third party.

- **Review NDA and settlement agreement templates.** Remove or redraft any confidentiality clauses that may prevent a worker from disclosing harassment or discrimination, or the employer's response to such issues. Settlement agreements should be reviewed to ensure they comply with the proposed excepted agreement conditions, including clear provision for permitted disclosures.
- **Monitor and evaluate.** Regularly review the effectiveness of your anti-harassment measures. Consider whether policies are being followed, whether training is having an impact, and whether reported incidents are being handled appropriately. Keep records of what you have done and any changes made. This will be important evidence of compliance in the event of a claim or EHRC investigation.

The changes introduced by the Employment Rights Act 2025 represent a step change in employer accountability for workplace harassment. Organisations that invest in preventative measures now will be better placed to comply when the new obligations take effect in October 2026, and to defend their position if challenged.

If you would like to discuss how these changes affect your organisation, please get in touch with your usual contact.

The authors would like to thank Trainee Solicitor Ifrah Hussein for her contribution to this article.

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