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Insights

UNION ACCESS AND THIRD-PARTY HARASSMENT PREVENTION: WHAT EMPLOYERS NEED TO THINK ABOUT

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Summary

The changes introduced on October 30 2026 have brought increased trade union access rights, which land at the same time as stronger workplace harassment protections. In this article, we consider how these two changes may interact and what steps employers should consider taking in respect of any trade union presence within their business.

A reminder on the changes

Trade unions can now request physical or digital access at companies with 21 or more workers. Access can be used to engage with workers (which includes meeting with, recruiting or representing). Employers must respond to such a request within 15 working days, with a further 25-working-day negotiation period.

Since the same date, employers must also take “all” reasonable steps to prevent third-party harassment of its staff in the course of their employment. This protection extends beyond sexual harassment to all other types of harassment covered by the Equality Act (race, disability, sex, etc). While what amounts to “all” reasonable steps will depend on the circumstances, the recently updated EHRC technical guidance on sexual harassment and harassment at work provides some practical advice as to what this may entail in the context of third parties.

Why does this matter?

A third party includes anyone other than the employer or its employees. That means an external union official would be a third party, just as a customer, supplier or contractor is. Employers are therefore in a position where they may have to give greater access to their workplace (and employees) to third parties, while at the same time being required to take all reasonable steps to prevent third-party harassment.

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Of course, we are not suggesting that employees are necessarily at risk of harassment by unions, any more than they are at risk of harassment from anyone else (colleagues or third parties). However, given the more stringent duty on employers now to leave no stone unturned, it must evaluate the potential risk here and address that risk appropriately.

So, what should employers do next?

We have set out below a number of steps employers should consider taking:

1. **Expectations of behaviour**: where unions are granted access to your workplace under the new statutory regime, access arrangements should clearly address the employer's expectations around union representatives' standards of behaviour. It is also advisable to agree with the union at the outset how any breaches of those standards will be dealt with by both the employer and the union. For example restricting direct contact between the union representative and the complainant, being subjected to an investigation and potential disciplinary action (by either the union or employer depending on who the employer is), and seeking an alternative representative pending the outcome of the investigation. Such arrangements may be written into an access agreement, a subsequent recognition agreement and/or a separate policy document. Employers should seek legal advice before taking any steps which could be construed as a detriment to its employees by reason of union activity or membership.

2. **Risk assessments**: Risk assessments should be carried out ahead of access being granted. This should be tailored to whether the request for access is physical or digital. For example, if the request is for digital access, does the risk assessment consider electronic communications and remote working? Should any instances of sexual harassment or third-party harassment occur, an updated risk assessment should be carried out, in light of that occurrence, to establish if the general risk profile has changed

3. **Logistics**: Consider suitable arrangements for meetings and communication considering the results of your risk assessment.

4. **Training and awareness**: Remind your staff of the process for raising concerns ahead of any access, including where a member of staff is a witness rather than the subject of harassment. Consider specific training for managers on how to spot issues where third parties such as unions are visiting the workplace, and consider whether additional company-wide training is needed to re-enforce what may amount to harassment and what the consequences might be for anyone who is found to have committed acts of harassment.

If you have any questions about this development or its implications for your business, please contact Jemima Rawding or another member of BCLP's UK Employment team.

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