

Client Alert

Global Human Capital and Compliance

OCTOBER 25, 2024

For more information,
contact:

Tessa Cranfield
+44 20 7551 7567
tcranfield@kslaw.com

Marie Hoolihan
+44 20 7551 7587
mhoolihan@kslaw.com

Matthew Sharples
+44 20 3929 5317
msharples@kslaw.com

King & Spalding

London
8 Bishopsgate
London, EC2N 4BQ
United Kingdom
Tel. +44 20 7551 7500

Changes to the Duty to Prevent Sexual Harassment

The Worker Protection (Amendment of Equality Act 2020) Act 2023 comes into force on 26 October 2024, introducing a new legal obligation on UK employers to take 'reasonable steps' to prevent sexual harassment at work. In this month's alert, we look at practical steps employers can take to comply with the new duty.

We also recap the key employment law changes announced on 10 October 2024, with some action points for employers to think about while the details of these measures are ironed out through parliamentary debate and public consultation. Employers can submit any responses to the Employment Bill consultations, please see the following links: [Zero-Hour Contracts Consultation](#); [Fire & Rehire and Strengthened Collective Redundancy Rights Consultation](#); [Statutory Sick Pay Consultation](#); and [Trade Union Consultation](#). All consultations are due to close on **2 December 2024**.

HOW IS THE LAW ON SEXUAL HARASSMENT CHANGING?

Before this change, employers were under no proactive duty to prevent sexual harassment, although if an incident occurred, an employer would potentially be vicariously liable unless it could show it took all reasonable steps to prevent it.

The #MeToo movement made it clear that existing laws with after-the-event liability were not enough and that more is needed to drive lasting cultural change.

To avoid liability going forward, an employer will need to show it proactively took 'reasonable steps'. It is an anticipatory duty requiring preventative action. What this entails will vary according to an employer's size and resources. The government wants to motivate employers to put in place practices which respond to the needs of their specific organisation, rather than creating a checkbox exercise.



Where an employer fails in the duty and sexual harassment takes place, compensation for the harassment itself can be uplifted by up to 25%. As compensation for discrimination is uncapped, this could potentially be very significant. Enforcement action may also be taken by the Equality and Human Rights Commission (**EHRC**) (the UK counterpart to the EEOC).

WHAT SHOULD EMPLOYERS BE DOING NOW?

Employers are required to take “reasonable steps” to prevent sexual harassment in the workplace. What is reasonable will vary, but should follow the EHRC [technical guidance](#) on sexual harassment in the workplace and its [eight-step guide](#) of the practical steps employers should be taking to comply with the new duty.

As a first step, employers should carry out a risk assessment. Risks include power imbalances, lone or night working, the presence of alcohol, or customer-facing duties. After identifying the specific risks in the business, employers should produce an action plan of the steps to be taken to address the identified risks, and how these will be implemented.

Potentially relevant steps might include:

- **Training and development** - consider what is already in place and what further training can be given to ensure employee engagement and awareness with the new requirements (ensuring tailored, relevant and up to date training materials), with monitoring and review/assessment of training outcomes.
- **Developing/strengthening policies** on workplace harassment.
- **Engage with staff** - conduct regular 1-2-1s, run staff surveys and exit interviews, and have open door policies to detect risk ‘hotspots’ at an early stage and understand what is happening in the workplace.
- **Clear reporting channels** - check that staff are aware of how to report incidents of sexual harassment, and that the reporting channel process designed in a manner that enables prompt, fair and thorough investigation. Consider using a reporting system (such as an online or independent telephone-based service) that allows workers to raise an issue either anonymously or in name.
- **Messaging on workplace sexual harassment** - Business leaders should set the tone – a clear message of zero-tolerance should be adopted to reinforce and attribute significance to the expectations of inclusion and respect in the workplace.
- **Monitor and evaluate the effectiveness of your actions and policies.** This could involve reviewing informal and formal complaints to see if there are any particular trends or issues, surveying staff on whether there are any further steps they think their employer could take and holding ‘lessons-learned sessions’ after any complaints of sexual harassment are resolved.

THIRD-PARTY HARASMENT

In addition to these new proactive duties, effective this month, the new government’s Employment Rights Bill (see below for more details) extends anti-harassment rules in two key ways:

- the duty to take “reasonable steps” to prevent sexual harassment in the workplace will now include **all forms** of harassment of an employee by **third parties**, not just other employees, and
- the extension of “reasonable steps”, as set out under the new legislation, will be extended to read “**all** reasonable steps”, marking a significant increase of the extent to which employers are obliged to prevent sexual harassment in the workplace.



These further changes are subject to consultation are not expected to be effective until 2026 at the earliest. However, many employers are looking to ensure compliance with these new changes as part of their review to capture the new guidance outlined above.

EMPLOYMENT RIGHTS BILL 2024 – RECAP

On the 10 October 2024, the UK’s new Labour government unveiled the long-awaited Employment Rights Bill setting out a new package for workers’ rights. The Bill had its Second Reading on the 21 October 2024, passing comfortably. No further details were unveiled. The Bill will now go to the committee stage where it will be examined by MPs in detail.

We do not anticipate seeing most changes coming in until 2026, given many require consultation, however all employers should be conscious of the changes to come. Some of the Bill’s key changes include:

Proposal	Impact / Action Points
Unfair Dismissal - will be a day one employment right	Expected 2026. In practice, (as now proposed by the Government) it would be subject to a 9-month probationary period. This is a point open to consultation. This presents a major change to how employers handle short-tenured employees and employers should consider updating their dismissal and probation policies.
Zero Hour Contracts - the right to be offered guaranteed hours	Changes subject to consultation. These changes may lead to a significant shift to employers’ workforce structures and planning.
Flexible Working - to become the default position	Employers will now have to show valid grounds for rejecting flexible working and to show that the rejection is reasonable. Where applicable, employers should look to tighten their approach to remote working and compressed hours, communicating clear policies to employees.
Strengthened Parental Rights and Statutory Sick Pay - will be a day one right, with additional protections after taking parental leave	Changes subject to consultation. Employers may incur additional costs and should ensure parental leave and dismissal policies are updated.
End of Fire & Rehire and Strengthened Redundancy Rights - significant changes to curtail usage	This practice will only be available in very specific circumstances. The headcount threshold for triggering collective consultation will also be more easily met as the employer’s staff at different workplaces will now be aggregated. Employers should ensure collective redundancy processes are updated to reflect these changes.
Gender Pay Gap Reporting - requirement to produce annual plans to address disparities	This change will only impact employers with more than 250 staff. Employers should put in place an action plan for recognising and closing their gender pay gaps.

For further information on the Bill, please see our previous alert linked [here](#).



WHAT NEXT?

The world of employment law never rests, and next month's client alert is already looking like a bumper edition. Expect updates covering *Thomas v Surrey and Borders Partnership NHS Foundation Trust* (whether English nationalism is a legally protected belief), *Dr Nigel MacLennan v The British Psychological Society* (extending whistleblowing protections for trustees), as well as updates on the timing of the new Employment Rights Bill.

ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,300 lawyers in 24 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising." View our [Privacy Notice](#).

ABU DHABI	CHARLOTTE	DUBAI	LONDON	NORTHERN VIRGINIA	SILICON VALLEY
ATLANTA	CHICAGO	FRANKFURT	LOS ANGELES	PARIS	SINGAPORE
AUSTIN	DALLAS	GENEVA	MIAMI	RIYADH	TOKYO
BRUSSELS	DENVER	HOUSTON	NEW YORK	SAN FRANCISCO	WASHINGTON, D.C.
