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UK Government to Introduce New Duty on Employers to Prevent Sexual Harassment in the Workplace

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The government has this week confirmed it will be introducing a new mandatory duty on employers to prevent sexual harassment in the workplace. At this stage, it is still not clear exactly what this new duty will entail, but it seems there is going to be a proactive obligation on employers to take "all reasonable steps" to prevent sexual harassment in the workplace.

In other words, rather than being able to rely on such an argument to defend an actual claim of sexual harassment (as is currently the case), employers are going to be required to demonstrate this upfront or risk liability if an incident of sexual harassment takes place.

The government's proposals are set out in its response to its 2019 consultation exercise on sexual harassment in the workplace. The response itself is very much a high-level overview of what the government intends, with very little detail on what any draft legislation might look like. Most companies are likely to feel fairly comfortable with the imposition of such a mandatory duty if, as the response suggests, it does not require employers to take any practical steps they are not already expected to take if they wish to benefit from the statutory defence. "Clear guidance" about what employers will be required to do to satisfy the test has been promised in the form of a new statutory code of practice from the Equality and Human Rights Commission (to complement its technical guidance issued in January 2020) and in new non-statutory "accessible" guidance outlining the sort of practical steps employers can take to comply with the duty.

The government is also planning to introduce (or should we say reintroduce) protection for employees who are subjected to third-party harassment, e.g. by clients or customers. Again, it is not yet clear exactly what this will look like, but the government apparently intends to allow for the same employer defence of having taken "all reasonable steps" to prevent the harassment. This was something contained in the first version of the Equality Act but quickly repealed in 2013 when it proved unworkable in practice – it will be interesting to see what has changed since then.

It will not be introducing new protection for interns and volunteers under the Equality Act 2010 as, in its view, most interns are probably covered already (to the extent they are employees or workers) and to give protection to volunteers would create a "disproportionate level of liability and difficulties for the organisation", especially those in the voluntary sector.

Finally, the government has confirmed it will be "looking closely" at extending the time limit for bringing all claims under the Equality Act 2010 (so not just sexual harassment claims) from three to six months. It recognises there are strong arguments for doing so, but has essentially said it is not willing to do this now because the tribunal system is already struggling to cope with the number of claims being brought and it does not want to overload the system further.

All of the above changes will apply to employers in Great Britain.

As for when these changes are likely to happen, we do not know. Once again, the government has said it will introduce legislation "when parliamentary time allows". It is unlikely we will see any draft legislation soon, but it is clearly just a matter of time before these changes hit the statute books. On that basis, employers should be reviewing the steps they currently take to prevent sexual harassment in the workplace and whether they might need to do more to satisfy any new mandatory duty. In the last few years, many employers have started to take more proactive steps to tackle all forms of harassment in the workplace, so this should hopefully stand them in good stead.

Over the last 18 months, we have been working with a number of clients to audit what they do on this front, including reviewing policies and procedures, introducing firmwide anti-harassment training programmes, etc. We also have a range of diversity and inclusion training solutions available for employers. These can be off the shelf or tailored to your organisation's requirements, supplemented by short introductory videos. If you would like to discuss this, please speak to your usual contact in the Labour & Employment team or one of the following partners.

Contacts

David Whincup
Partner, London
T +44 207 655 1132
E david.whincup@squirepb.com

Caroline Noblet
Partner, London
T +44 207 655 1473
E caroline.noblet@squirepb.com

Janette Lucas
Partner, London
T +44 207 655 1553
E janette.lucas@squirepb.com

Annabel Mace
Partner, London
T +44 207 655 1487
E annabel.mace@squirepb.com

Miriam Lampert
Partner, London
T +44 207 655 1371
E miriam.lampert@squirepb.com

Charles Frost
Partner, Birmingham
T +44 121 222 3224
E charlie.frost@squirepb.com

Ramez Moussa
Partner, Birmingham
T +44 121 222 3346
E ramez.moussa@squirepb.com

Alison Treliving
Partner, Manchester
T +44 161 830 5327
E alison.treliving@squirepb.com

Bryn Doyle
Partner, Manchester
T +44 161 830 5375
E bryn.doyle@squirepb.com

Matthew Lewis
Partner, Leeds
T +44 113 284 7525
E matthew.lewis@squirepb.com

Andrew Stones
Partner, Leeds
T +44 113 284 7375
E andrew.stones@squirepb.com

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