

DUTY ON EMPLOYERS TO PREVENT SEXUAL HARASSMENT IN THE WORKPLACE

Meeting: Employment Committee

Date Of Meeting: 19 November 2024

Report Author(s): Amanda Jeffrey

Lead Officer: Kevin Foster | kevin.Foster@woking.gov.uk

Portfolio Holder: Cllr Ann-Marie Barker | cllrann-marie.barker@woking.gov.uk

Date Published: 11 November 2024

Will the decision be open for call in (i.e. is it a key decision)? Yes No

Does the report contain confidential or exempt information? Yes No

1.0 Purpose of Report

1.1 To update the Committee on the new positive duty on employers to prevent the sexual harassment of their employees in the course of their employment and confirm the steps the Council is taking to comply with this new duty.

2.0 Recommendations

2.1 The Committee is requested to:

RESOLVE THAT

To note the new duty and steps the Council is putting in place to comply.

Reason for Decision

2.2 To enable the adoption of the new duty on employers to prevent sexual harassment in the work place.

3.0 Proposal and Outcome

3.1 To comply with the Worker Protection (Amendment of Equality Act 2010) Act 2023 which introduced a new legislative duty on all employers.

3.2 The Council must take a number of “reasonable steps” to prevent sexual harassment in the workplace.

3.3 This paper outlines the steps officers are currently working on to ensure compliance.

DUTY ON EMPLOYERS TO PREVENT SEXUAL HARASSMENT IN THE WORKPLACE

4.0 Background

- 4.1 In October 2024 The Worker Protection (Amendment of Equality Act) Act 2023 introduced a new, positive obligation on employers to take 'reasonable steps' to prevent sexual harassment in the workplace. The obligation is designed to ensure that employers not only react once incidents have taken place but take pre-emptive action to stop them from occurring.
- 4.2 The new duty requires employers to implement policies, training, and systems aimed at preventing sexual harassment before it occurs. Employers can be held liable for harassment committed by their employees if they fail to take reasonable steps to prevent it.
- 4.3 The Council will need to review and update existing anti-harassment policies, ensure that all employees are trained on the policies and put in place effective processes for handling complaints. In doing so the Council will also need to consider harassment committed by third parties, including clients, customers, contractors, or visitors to the workplace.
- 4.4 Previously employers had a 'statutory defence' to any harassment claim (not just sexual harassment) if they could show that they had taken all reasonable steps to prevent the harassment concerned.
- 4.5 The new law goes one step further and requires employers to take a proactive, rather than reactive, approach to preventing all sexual harassment in the workplace. This involves employers anticipating scenarios where there is a risk that their employees may be subject to sexual harassment and taking reasonable preventative steps to address these risks.
- 4.6 Although the act does not expressly place a duty on an employer to prevent harassment by third parties, it is nevertheless drafted widely enough to cover acts of harassment by third parties such as customers or service users. The Council will therefore need to anticipate the risk of employees being sexually harassed by third parties as part of their risk assessment to avoid breaching the new duty.
- 4.7 The Act does not define specific 'reasonable steps' that the Council must take, leaving room for interpretation based on the unique circumstances of each workplace. The Equality and Human Rights Commission (EHRC) has provided guidance to help employers navigate this new duty, emphasising that the reasonableness of a step will be judged objectively. Factors, such as the organisation size, work environment, potential risks, and the likelihood of employees interacting with third parties, should all be considered when determining what constitutes a reasonable step.
- 4.8 Employers are encouraged to anticipate scenarios where employees might be at risk of sexual harassment and to put measures in place to mitigate these risks.
- 4.9 To ensure the Council is complying with the new duty the following steps are being developed by officers:
 - Updating the current Bullying and Harassment policy and in doing so address third party harassment;

DUTY ON EMPLOYERS TO PREVENT SEXUAL HARASSMENT IN THE WORKPLACE

- Establishing clear reporting procedures, providing a range of options for reporting;
- Conducting risk assessments to identify potential sexual harassment risk factors;
- Providing training for staff and managers on what sexual harassment in the workplace looks like, what to do if they experience or witness it, and how to handle any complaints of harassment;
- Reviewing grievance and disciplinary processes;
- Ensuring prompt and thorough investigations by suitably trained managers;
- Fostering a supportive workplace culture with a zero-tolerance approach to sexual harassment.

4.10 By imposing a positive duty on employers to take reasonable steps to prevent harassment, the new duty aims to create safer, more respectful working environments. The steps outlined above will ensure that the Council is complying with the law and protecting employees from sexual harassment.

5.0 Implications

Legal

5.1 Requirement to comply with the new legislative duty.

Resources (including finance)

5.2 The steps outlined can be accommodated within existing budgets and staffing.

Risks and Mitigation

5.3 The new duty gives employment tribunals the authority to increase any compensation awarded to the employee by up to 25% if the employer is found to have failed in their duty to prevent harassment. Compensation for sexual harassment claims is unlimited, meaning the 25% penalty could make a significant difference to the compensation awarded in a successful claim.

5.4 Additionally, The Equality and Human Rights Commission will be able to take enforcement action against organisations that breach the new duty. As such action is public, this could cause significant reputational harm.

Consultation, Equality Impact Assessments

5.5 The steps taken by the Council to comply with this new duty will apply to all employees and therefore a separate impact assessment will not be required.

Environment and Climate Change

5.6 None.

Report Ends