

FACTSHEET 5

A TOUGHER STANCE ON WORKPLACE HARASSMENT – ALL REASONABLE STEPS AND THIRD-PARTY LIABILITY

WHAT'S CHANGING?

Workplace harassment (especially sexual harassment) has been high on the agenda in recent years.

The Employment Rights Act 2025 ('ERA 2025') is set to strengthen employers' duties in this area in two notable ways:

1. A STRONGER PREVENTIVE DUTY FOR EMPLOYERS

Currently, under the *Equality Act 2010*, an employer can defend a harassment claim by showing it took 'all reasonable steps' to prevent the harassment.

In October 2024, a separate law (the *Worker Protection Act*) introduced a proactive *duty* on employers to take reasonable steps to prevent

sexual harassment. But ERA 2025 goes further by requiring employers to take *all* reasonable steps to prevent sexual harassment.

The word 'all' is key. It raises the bar. It implies a more stringent obligation. It's not enough to do *something*; you must do *everything* that is reasonably in your power to stop sexual harassment before it happens.

ERA 2025 also gives government the power to issue Regulations detailing what counts as 'reasonable steps'. So, expect more detailed guidance (possibly a statutory Code of Practice) on what employers should be doing, e.g. regular training, robust policies, monitoring workplace culture etc.

2. LIABILITY FOR THIRD-PARTY HARASSMENT

ERA 2025 reinstates (and broadens) a law that was previously in place years ago: making employers liable if a third party (customer, client, contractor, etc.) harasses their staff if the employer failed to take all reasonable steps to prevent it.

Right now, if, say, a customer harasses your employee, the employee can't sue *you* for harassment under Equality Act.

The new provision explicitly covers all types of harassment by third parties (not just sexual, which was the focus in earlier proposals), and makes you liable for that third party harassment.

The only defence will be that you took all reasonable steps to prevent it. In practice, this means employers must be proactive in protecting staff from harassment not just by colleagues, but by clients, patrons, patients, suppliers – anyone they interact with through work.

In addition, ERA 2025 makes it clear that if an employee discloses information about sexual harassment, it counts as a 'protected disclosure' (whistleblowing) by default (assuming they reasonably believe it's in the public interest). This means if someone raises a complaint or even speaks up about being harassed (or seeing harassment), they gain whistleblower protections. So you must not subject them to any detriment or dismissal for having done so, or you risk uncapped compensation. It's far from clear this adds anything, as they would almost certainly have had protection under existing whistleblowing laws, and under victimisation laws, but it's a piece of window dressing that the government wants to be seen to be implementing.

The addition of sexual harassment disclosures to the list of 'protected disclosures' for whistleblowing purposes is, according to the government's roadmap, due to come into effect in April 2026. The changes to the preventative duty on sexual harassment and the introduction of liability for 3rd party harassment are due to be implemented in October 2026.

HR IMPACT – WHAT TO DO NOW

HR has long been at the forefront of anti-harassment efforts, but these changes mean we need to double-check that we're truly doing 'all reasonable steps'. Here's how to prepare:

- **Refresh your harassment policies and training:** When was the last time you reviewed your anti-harassment policy? Does it explicitly cover harassment by third parties (e.g., 'what if a client behaves inappropriately toward you – here's how to report, here's what we'll do')? Update policies to ensure they do. Make it clear that harassment of any kind will not be tolerated – whether from a boss, colleague, or customer. Then look at training: are all employees trained on acceptable behaviour and how to intervene or report issues? Are managers trained on how to handle complaints sensitively and promptly? If training has been a one-off, consider implementing it regularly (e.g. annual refreshers or onboarding for new hires followed by follow-ups). Document this training – you may need that evidence to show you took 'all reasonable steps.'
- **Specific focus on third-party scenarios:** Conduct a risk assessment: in what situations might your staff face harassment from third parties? If you're in retail or hospitality, that could be customers (think of the bar staff being harassed by a drunk patron). If healthcare, patients or

their families. If an office, maybe clients or contractors on site. For each, devise preventive measures. For example, for public-facing roles, you might implement a zero-tolerance policy for customer abuse – signage that abusive customers will be removed, a protocol that staff can call a supervisor or security if a customer crosses the line, and empowerment to refuse service. For client meetings, perhaps a policy that employees are not to meet alone in certain environments if there's concern, or simply a culture where if a client is known to harass, you address it with the client's company. Train employees on these measures too: e.g., how to de-escalate and report if a client harasses them.

- **Mechanisms for reporting and responding:** Having great policy on paper means little if employees don't feel safe to report harassment. Ensure there are clear, multiple channels to report – their line manager, HR, a confidential hotline, etc. And critically, emphasize no retaliation – which ties into the whistleblowing aspect. If someone does come forward about harassment (whether by a colleague or third party), treat it as a protected disclosure. That means not only do you investigate the harassment, but also you shield that reporter from any subtle reprisals (being ostracized, passed over, etc.). It can be useful to designate certain complaints explicitly as 'whistleblowing – sexual harassment' so that managers understand the sensitivity. Also update whistleblowing policies to include sexual harassment in examples of protected disclosures (the law will say it, but good to mirror it in policy).
- **Consider monitoring and culture-checks:** 'All reasonable steps' might include proactive measures like periodic anonymous surveys about workplace culture ('Do you feel safe? Any experiences of harassment to report?'), or climate assessments especially in high-risk areas (e.g., a particular location where

there's known banter that might borderline harassment). If you uncover issues, act on them. The government recently put out a 'call for evidence' on what works to prevent harassment – indicating they're looking for best practices. Keep an eye on that; it might lead to formal guidance that effectively becomes expected of employers.

- **Third-party harassment action plan:** For businesses where employees regularly interact with customers/clients, create a plan: How will we respond if an employee reports a client harassed them? This might include: taking the employee's complaint seriously (of course), investigating if needed (maybe talk to the client's HR if it's B2B situation), possibly banning the offender from your premises or from being serviced by that employee, offering the employee support (counselling, or at least checking on their wellbeing, and no pressure to continue dealing with that person). Document these response steps in a procedure. That way, if ever a tribunal asks, 'what did you do to prevent third-party harassment?', you can show you had a clear stance and response protocol. The law doesn't require you to do the impossible – it requires what's reasonable. So, for example, in a shop you obviously can't screen every customer, but you can train staff and have security steps. In a B2B client context, you can absolutely refuse to have a serial harasser attend meetings or request the client send someone else. Taking those kinds of steps will likely be seen as 'reasonable (and expected) steps.'
- **Addressing misconceptions:** Some managers might say, '*We can't control how customers behave – is it fair we're liable?*' The point is you're not automatically liable for a customer's actions; you're liable if you didn't do what was reasonable to protect your staff. So no, you can't mind-control a customer, but you can set standards and

react appropriately. If an employer just says, 'Not our problem, tough it out,' that will no longer fly. Another question: 'What exactly are 'all reasonable steps'? How do we know when we've done enough?' It's a bit open-ended (and intentionally so – it will vary by size and nature of employer). A good rule: if you can think of a measure that is practical, not unreasonably costly or disruptive, and it could reduce the chance of harassment, you should probably be doing it. For example, reasonable steps might include: robust policy, regular training, clear reporting channels, swift disciplinary action against harassers, management oversight of workplace culture, etc. If you're doing *all* those, you're close to 'all reasonable steps.' ERA 2025 foresees regulations giving more detail, so we might get a checklist in the future. But don't wait – act with an abundance of caution. It's much better to slightly over-do prevention than under-do and face a tribunal saying, 'you could have done X, but you didn't.'

- **Whistleblowing angle:** Make sure your managers know: if someone raises a harassment complaint (particularly sexual harassment), *any* negative treatment of them after that can trigger a victimisation or whistleblowing claim. For example, if a junior employee alleges a senior person harassed them and then finds themselves moved off projects or given poor reviews, that's a huge red flag. HR should monitor situations post-complaint to ensure there's no retaliation (even subtle). Sometimes retaliation isn't overt but career-impacting – so consider having a specific senior person (maybe a whistleblowing champion or HR director) keep in touch with anyone who made a harassment report, to check that they feel no backlash. The law explicitly protecting harassment whistleblowers will embolden more people to speak up (which is a good thing), so we must guard those people.

In practice: You might want to run an internal campaign. Re-launch your harassment policy, put up posters about a respectful workplace, and include third-party harassment scenarios in team briefings. This isn't just compliance; it's good employee relations. A workplace that is proactive against harassment is likely to be one where employees feel safer and more valued. Also consider diversity and inclusion efforts – often, a culture that embraces diversity will also naturally discourage harassment.

One more note: these changes connect with broader equality duties. While not explicitly in ERA 2025, the government is also looking at broader 'Equality Action Plans' for employers (in fact, large employers will have to publish gender pay gap *action plans* under ERA 2025 – voluntarily from April 2026, becoming mandatory some time in 2027). Tackling harassment could well be part of such action plans. HR might be tasked with coming up with measurable steps to improve workplace equality and respect. So, it all ties together – see ERA 2025 as a push towards active management of workplace culture rather than reactive.

Start doing an 'all reasonable steps' audit: ask, 'Are we really doing everything we reasonably can to prevent harassment?'

If the answer is, 'we have a policy on page 42 of the handbook that no one's read in years', you've got work to do.

If it's 'we have regular training, an open culture, swift discipline for offenders, and we've even addressed client behaviour in contracts', then you're in good shape – keep it up and document it. The law will soon demand no less.