



New Sexual Harassment Duty

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Legislative change 26.10.2024

Worker Protection (Amendment of Equality Act 2010) Act 2023 ('the Act').



Comes into force on 26 October.



Imposes a new legal duty on employers to take reasonable steps to prevent sexual harassment taking place in the course of employment (a mandatory duty).

To whom does it apply?

Employers who are already in scope under Equality Act 2010 which it amends with a new section 40A.



No extension of scope of “employer”.

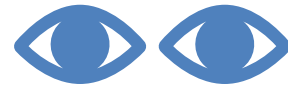


No protection re: third party harassment or other forms of harassment; just sexual harassment.

What does the duty require?



Taking “reasonable steps”



Subjective, objective or
mixed test?



Impact of previous
knowledge of incidents /
risks?

Why does this matter?




theguardian.com

Ex-Labour MP must pay £434k damages to woman he repeatedly assaulted

Tribunal case against Mike Hill may lead to court action from other victims of sexual offences by MPs

Rajeev Syal Home affairs editor
Thu 19 May 2022 10.25 BST
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Mike Hill conducted a campaign of sexual harassment and bullying against Woman A over a 16-month period in 2017-18. Photograph: Gary Calton/The Observer

A woman who was repeatedly sexually assaulted and harassed by a former Labour MP has been awarded nearly £435,000 by an employment tribunal in a ruling that could have major implications for outstanding claims against MPs.

A central London employment tribunal on Wednesday ordered the former member for Hartlepool Mike Hill to pay £434,435 to Woman A.

She was **victimised after spurning Hill's advances**, an employment tribunal ruled in July. He was found to have got into the victim's bed and to have sexually assaulted her in his parliamentary office.

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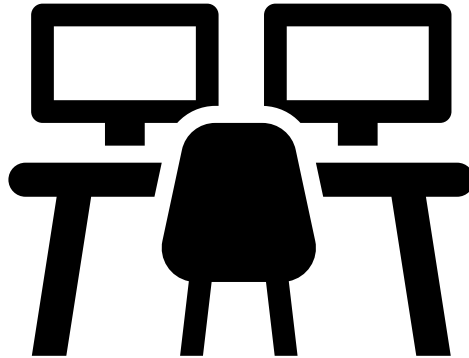
Key things to think about!



Key things to think about?

- Leadership & role models.
- Nature of work and workforce.
- Risk assessment.
- History / incidents known about.
- Statement of values.
- Policies and procedures.
- Training.
- Support mechanisms.
- Sanctions.

What does this look like in practice?



EHRC Guidance

EHRC launched a consultation in July 2024 on technical guidance.

Current guidance updated 26.9.2024

<https://www.equalityhumanrights.com/guidance/sexual-harassment-and-harassment-work-technical-guidance>

Employer guide on prevention:

https://www.equalityhumanrights.com/sites/default/files/2021/preventing-sexual-harassment-at-work-guide-for-employers_0.pdf

A preventative duty

“The preventative duty is an anticipatory duty. Employers should not wait until an incident of sexual harassment has taken place before they take any action. The duty requires that employers should anticipate scenarios when its workers may be subject to sexual harassment in the course of employment and take action to prevent such harassment taking place. If sexual harassment has taken place, the preventative duty means an employer should take action to stop sexual harassment from happening again. However, if an employer fails to take reasonable steps to comply with the preventative duty, there are consequences.” **EHRC, 2024**

EHRC Toolkit



Enforcement?

- Section 124A EqA provides mechanism for compensation uplift to be ordered by ET where it upholds a complaint of sexual harassment and finds employer was in breach of its mandatory duty to take reasonable steps.
- EHRC enforcement action under s.40A(3) EqA.
- Maximum uplift of 25% permitted.

Some examples of grey areas

- Historic / long running allegations of harassment that pre-date the coming into force of the duty.
- Whether s.124A(1)(a) EqA can apply to a claim which is not one of sexual harassment, but forms background given meaning of “to any extent” in context?
- The ambit of s.124(2) EqA.

Moving towards prevention?

- Regulatory trend to seek to prevent.
- Legislation thus far very much a remedy for acts that have already occurred i.e., horse has bolted.
- Very limited scope for interim relief in ET.
- Cost of impact to employee / workforce including time off due to mental health issues not to be underestimated.

Please note

These slides do not represent legal advice, and individual cases will turn on their specific facts.

Please do not hesitate to contact the authors if you do wish to seek case specific advice or representation.

Thank you

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