

# SEXUAL HARASSMENT PREVENTION IN THE WORKPLACE



With the new duty upon employers to prevent sexual harassment under the amended Equality Act 2010, Leading Minds have put together this resource for HR/L&D teams as they consider how to meet their legislative and regulatory obligations.

## **This resource covers:**

- The statutory duty to prevent sexual harassment and EHRC guidance
- SRA policy and guidance on the new preventative duty
- Taking action:
  - Risk Assessment
  - Updates to policies
  - Management and staff communications
  - Management and staff training

Please note this resource has been created on behalf of Leading Minds by Katie Jackson, former SRA regulator and organisational psychologist, and is for reference only. This resource is not to be treated as legal advice.

## **NEW STATUTORY DUTY TO PREVENT SEXUAL HARASSMENT AND EHRC GUIDANCE**

The Equality Act 2010 has been amended to include a new duty to prevent sexual harassment.

Under the Worker Protection (Amendment to the Equality Act 2010) Act 2023, employers now have a legal duty to take 'reasonable steps' to prevent sexual harassment of their employees.

The Equality Act is amended at section 40A with the new duty:

“(1)An employer (A) must take reasonable steps to prevent sexual harassment of employees of A in the course of their employment.

(2)“Sexual harassment” in subsection (1) means harassment of the kind described in section 26(2) (unwanted conduct of a sexual nature).”

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Supporting guidance from the Equality and Human Rights Commission (EHRC) explains that the new preventative duty operates alongside the pre-existing duties in equality and diversity, namely under the provisions covering discrimination, harassment, and victimisation. The EHRC have stated that businesses should not conflate their duties; the new requirement does not take away those pre-existing obligations, but instead adds the requirement to risk assess potential scenarios that could occur in employees' working arrangements.

If we look at the Equality Act, we can find the protected characteristic of sex under section 11, and the prohibited behaviour of harassment under section 26. The requirement to prevent harassment has not replaced these two requirements, and businesses should continue to meet these obligations. The Act instead adds a further preventative duty.

The EHRC have produced multi-point guidance highlighting recommended steps for complying with the requirement. In summary, it advises businesses to add the preventative to their existing policies and procedures, and to develop and implement a firm wide risk assessment.

There is a list of particular workplace risk factors developed by the EHRC, which they believe increase the likelihood of sexual harassment.

## THE LIST INCLUDES THE FOLLOWING FACTORS:

- Lone working
- Night working
- Out of hours working
- The presence of alcohol
- Client facing duties
- Particular events that raise tensions
- Travel to different work locations
- Working from home
- Attendance at events
- Socialising outside events
- Social media contact between workers

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Firms are advised to consider whether such situations apply to the work conducted by their employees. If such risk factors do apply, the organisation should think carefully about how to safeguard their workers from potential harassment. Harassment that could be perpetrated by third parties should also be considered, and firms may want to think about whether their staff are in situations where they are reliant on the behaviour of another.

## YOU MAY ALSO WANT TO CONSIDER THE BELOW SCENARIOS WHICH GO BEYOND THE EHRC GUIDANCE:

- **Firm trips and holidays:** Whether the firm offers any breaks or short trips that might be work or social based, and whether there should be firm conduct policies that apply to their offer, acceptance, and continuance.
- **Christmas parties:** Whether the firm has an annual Christmas party, or in fact any other type of party, where it is customary to focus on social enjoyment. If so, should the firm consider regulating the conduct of staff during the event.
- **Office relationships.** Relationships within an office environment can sometimes be impacted by power imbalances and businesses need to take care with the conduct of others in such situations, and any point when staff may approach other members of staff about out of work contact.
- **Offer of positions:** Consider how recruitment processes are conducted by the firm and whether individuals applying for positions can be placed under pressure by those recruiting.
- **Physical behaviour:** The SRA have raised this in their guidance as a behavioural issue they would consider. They specify cornering another person, or touching them, as particular indicators of a problem. You may wish to consider expanding your existing policies to cover these points.
- **Presents and gifts:** The firm may already have a policy in respect of gifts and presents. Such items could be given with an expectation, and the firm may wish to internally regulate their offer and acceptance, or whether they are permitted between staff members.

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## **SRA POLICY AND GUIDANCE ON THE NEW PREVENTATIVE DUTY**

The SRA's policy and guidance in respect of the new preventative duty refers to the ECHR guidance, and in that sense, closely mirrors the law. If we look at the regulator's position in respect of harassment in more broad terms, the SRA is concerned about the balance of power within law firms and whether employees have sufficient redress towards the behaviour of those they work with.

Part of addressing power imbalances is planning in advance to ensure that workers do have a safe environment, and that they are given support to ensure they feel protected by the firm. Further SRA guidance, and indeed the rules, specify that firms cannot take unfair advantage of their staff, and that staff members cannot take unfair advantage of each other. Publishing firm wide guidance and proactive scenario based risk assessments supports safe working, and sends a clear message that this is firm policy – and that the firm's approach does not advocate risky behaviour, or placing others in positions which are unsafe.

Considering how and when harassment might arise gives us a useful starting point to forward plan for preventative measures, and helps firms meet the SRA's outcomes in equality and diversity, and unfair advantage, as it demonstrates clear thinking about potentially hazardous situations.

The SRA may take action against an individual for matters which occur in their private lives, if the issue realistically impacts private practice. This impact on practice includes whether the alleged incident affects the perception of the individual's standing as a solicitor. This means firms should also warn solicitors and employees of the risks of behaviour which occurs outside of work.

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## TAKING ACTION

Firms should look carefully at the new requirements to prevent sexual harassment and implement the following:

- Risk Assessments
- Updates to policies
- Management and staff communications
- Management and staff training

You may decide to appoint a designated lead officer to:

- Implement the actions from the risk assessment,
- ensure it is regularly reviewed,
- update policies and procedures, and
- support management across the firm to communicate the security measures to staff.

### Risk Assessment

The following template can be used to support the new duty to prevent sexual harassment. Some risk factors are provided. You can add in further factors in the blank spaces at the end, or amend the existing risk factors yourself. The further columns ask for a description of the risk you see (including whether or not you see a risk); the mitigations the firm can put in place to manage the situation for staff; and how those mitigations will be implemented in a plan.

The firm can develop a range of different preventative actions for each situation. This might include a firm-wide alcohol consumption policy; a travel advice policy which provides details of approved hotels and safe travel arrangements; internal travel notifications confirming destinations, arrangements, dates, and returns; and advice concerning external events. You may wish to discuss with individuals how they travel to and from work, when they are working late, and how the office is made safe if individuals are alone.

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RISK FACTOR	DESCRIPTION OF THE RISK TO STAFF	MITIGATIONS	IMPLEMENTATION PLAN
Lone working			
Night working			
Out of hours working			
Presence of alcohol			
Client facing duties			
Events that cause tension			
Travel to different work locations			
Work from home			
Attendance at events			
Socialising outside work			
Social media contact between workers			
Firm trips and holidays			
Christmas parties			
Office relationships			
Offer of positions			
Physical behaviour (e.g. cornering)			
Presents and gifts			

You will need to regularly review the risk assessment and keep it up to date to reflect changing work patterns, approved travel arrangements, and suggested security measures.

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## Policies and procedures

A number of policies and procedures will require updating (or even creating), to reflect the new duty to prevent. There is a checklist featured below. You may also find further aspects of your office manual that need to be re-worded.

POLICY OR PROCEDURE	CREATED OR UPDATED	DATE
Health and Safety		
Inappropriate behaviour		
Favouritism		
Conflict of interest (internal)		
Abuse of authority		
Lone working		
Travel		
Alcohol		
Socialising		
Presents and gifts		
Social media use		
Reporting concerns		
Equality and diversity		
Reporting and grievance		
Employee misconduct		
Management responsibilities		
Management job descriptions		

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## Management and staff communications

Once you have completed your risk assessment and updated your policies and procedures, you should be in a position to discuss the new duty to prevent with staff, and to ensure they understand the measures they should take to ensure their safety and security. Managers should also be in a position to refer to the advice in the office manual, and print out copies for staff.

Consider one off memorable item communications (a colourful card or other small keepable item featuring details of the measures in place and how to maintain safety). Such an item may also give details of telephone numbers to contact in case of an emergency, and may be a suitable size to keep in a wallet.

## Management and staff training

As well as communicating updates to policies and procedures with managers and staff, both groups will require training on ensuring their own, and their teams safety and security.

In addition to general safety advice, staff should also be confident in dealing with third parties and the potential for unwanted attention from people outside the firm that they may come into contact with while they are at work. This means managers should also discuss the firm's pre-existing approach to angry, aggressive or unwelcome conduct from clients, other professionals, and anyone in or around the workplace. Staff should be confident in how to address such behaviour and how to raise this as an issue with their manager or with the firm as a whole.



# SEXUAL HARASSMENT PREVENTION IN THE WORKPLACE



Leading Minds can support you with the below training, designed by Katie Jackson, former SRA regulator and organisational psychologist:

## LEADERSHIP TRAINING: SEXUAL HARASSMENT PREVENTION IN THE WORKPLACE

Alongside looking at the legislative duty on the firm/managers, this session covers the related theme of the SRA's more general guidance on sexual harassment and the importance of equality and fairness in workplace relationships between employee and employer.

### This session covers:

- Legislative and regulatory discussion of the preventative duty and SRA policy towards sexual harassment
- Scenarios which employees may be placed in and how partners and managers can support their employees
- Regulatory and legislative consequences of non-compliance
- The obligation on management to challenge behaviour and reporting considerations

**Duration: 60 minutes**

## FIRMWIDE TRAINING: SEXUAL HARASSMENT PREVENTION

This is a taught information session which looks at the firm's internally developed position on preventing sexual harassment, reviewing the advice and support available across the firm for a range of different scenarios.

### This session covers:

- SRA and regulatory obligations on the firm relating to sexual harassment prevention
- Recognising sexual harassment
- Taking action from different viewpoints, for example bystander, proactive preventer or being the subject of unwanted attention
- Support available across the firm

**Duration: 60 minutes**

For further information on how Leading Minds can support your firm to meet its legislative and regulatory requirements regarding sexual harassment in the workplace, please contact us on [info@leadingmindsglobal.com](mailto:info@leadingmindsglobal.com).