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ERA update – harassment and gender equality action plans

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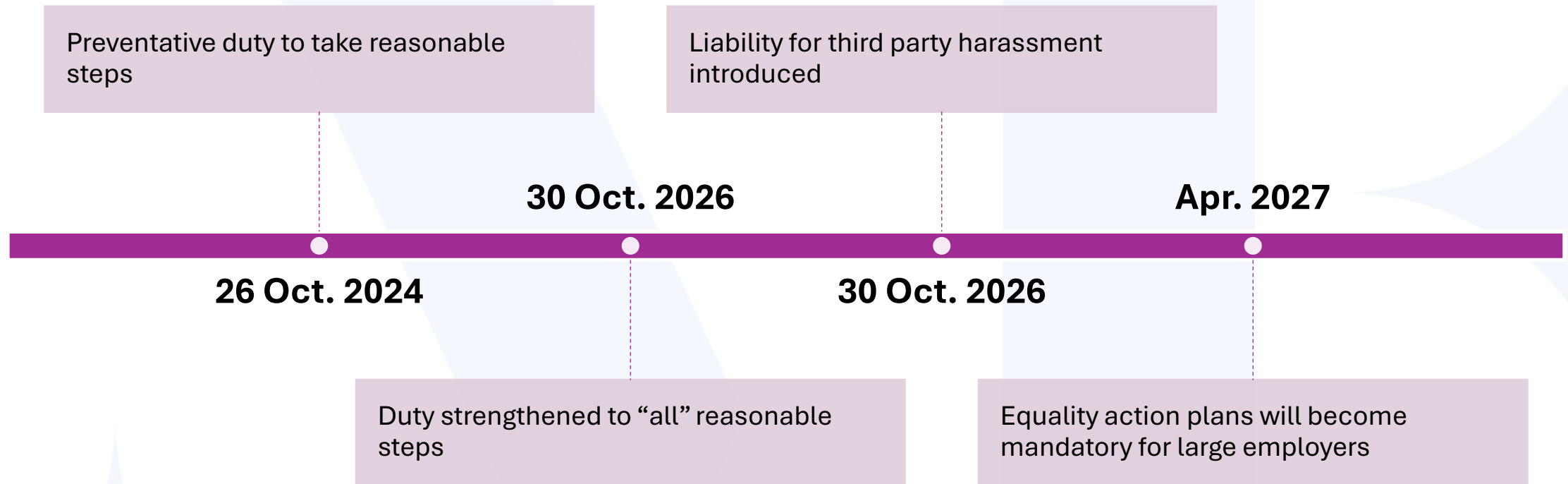


What we will cover

- Timeline
- Current position
- “All” reasonable steps duty
- Difference from statutory defence
- Compliance measures
- Guidance
- Third-party harassment liability
- Gender Equality Action Plans
- Q&A

Timeline

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Current position

- Duty to take reasonable steps to prevent sexual harassment in force
- Up to 25% uplift on compensation where the duty is breached
- EHRC has power to investigate and enforce
- There is no standalone claim for breach of the duty, a claim for harassment must first succeed
- Third-party sexual harassment is covered by the EHRC preventative duty, but there is no direct liability for employers

“All” reasonable steps duty

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- Addition of the word “all” aligns the preventative duty with the current statutory defence available to employers under the Equality Act s109(4)
- Department for Business and Trade’s factsheet says the aim is to remove the perception that the preventative duty was a lower bar
- Significantly, a failure to take any reasonable step will now result in a breach of duty – potentially even if the particular step would not have prevented the sexual harassment
- It is likely larger and more complex organisations will need to take more steps to prevent sexual harassment than smaller ones

Difference from statutory defence



All reasonable steps defence	All reasonable steps preventative duty
Defence available to employers after an employee has committed an act of discrimination or harassment, allowing the employer to avoid vicarious liability	Standalone proactive obligation requiring employer to take preventative action before sexual harassment occurs
Tribunal examines whether employer took all reasonable steps to prevent the individual employee from carrying out the act	Focus is broader, examining whether employer has taken all reasonable preventative steps across the workplace generally
Failure to establish defence renders employer vicariously liable for discriminatory act	Failure to comply can lead to EHRC enforcement action and an uplift of 25% on compensation in a successful sexual harassment claim
Defence focuses on policies, training, supervision etc of perpetrator	New duty requires wider assessment of organisation risk such as culture, reporting mechanisms, high risk environments etc
BUT statutory defence is rarely argued and even more rarely successful – is new duty too high a bar?	

Compliance measures



- Undertake and regularly review harassment risk assessments
- Implement comprehensive and tailored training programmes, that are regularly updated
- Update policies and ensure they are accessible and supported by visible reporting routes
- Employee should be able to raise concerns confidentially, with clear procedures for investigating promptly and consistently
- Monitor effectiveness and maintain evidence of compliance
- Engage senior leadership with active promotion of a culture of respect and inclusion
- Allocate responsibility for compliance and ensure managers are accountable for addressing inappropriate behaviour

Current guidance

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- [Factsheet: Preventing workplace sexual harassment: enabling regulations about 'reasonable steps'](#)
- [Sexual harassment and harassment at work: technical guidance | EHRC](#)
- [Employer 8-step guide: Preventing sexual harassment at work | EHRC](#)
- [Preventing sexual harassment - Sexual harassment - Acas](#)
- [Sexual harassment - Harassment law changes - Acas](#)

Future regulations

Steps specified in regulations, expected in 2027/28 following consultation, will include (but not limited to):

- Carrying out assessments of a specified description (likely to cover risk assessments)
- Publishing plans or policies of a specified description (likely to cover action plans and sexual harassment policies)
- Steps relating to the reporting of sexual harassment
- Steps relating to the handling of complaints

Section 40B(2) Equality Act 2010



Third-party harassment

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Third-party covers customers, clients, contractors, service users, visitors to the workplace, patients, students and the general public etc

Applies to harassment related to all relevant protected characteristics, not just sexual harassment

A single incident may create risk if preventative measures have not been taken

Claimants will have to show that the employer failed to take all reasonable steps to prevent the third-party harassment

Mitigating third-party risks

- Contractual standards for clients and suppliers
- Warning notices and zero-tolerance messaging
- Security and staffing measures
- Incident reporting processes
- Maintain records of complaints, identify patterns and review effectiveness of existing controls
- Provide training for managers on identifying risk, their responsibilities, escalation procedures and the organisations commitment to taking action

Challenges

Procedures following complaints will differ from internal harassment complaint procedure as:

- Limited control over third parties
- Evidence gathering likely to be more difficult
- Commercial relationship pressures will come into play
- Need for prompt action and documentation remains

Example



An employee who works alone complains that they have been sexually harassed by a third-party contractor whilst out on site

The employer acknowledges the complaint but does not commence an investigation

They let the employee know that they will send someone else to that site in future, to avoid the issue

Are there any issues with the employer's approach here?



Gender Equality Action Plans

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Currently voluntary for large employers (250+ employees) but will become mandatory from April 2027

Published alongside gender pay gap reporting with first mandatory reports published in April 2028

Smaller employers also encouraged to voluntarily implement where possible



Gender Equality Action Plans

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Plans must set out the steps an organisation is taking to address gender pay gap and supporting women through menopause

Provides employer with an opportunity to highlight what they are already doing to tackle workplace inequality

Will be regulations that may provide further detail on content of GEAPs, form and manner of publication, frequency and need for senior approval

Likely to have to publish on website and on UK government portal for GPG

[Creating an action plan: guidance for employers - GOV.UK](#)



Gender Equality Action Plans

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Step 1:

- Analyse your data to find the causes of your gender pay gap
- Engage with employees to understand how they may be impacted by menopause at work

Step 2: choose actions

- One should relate to the gender pay gap
- The other must be aimed at supporting employees going through menopause
- Govt guidance contains 18 recommended, evidence-informed actions for employers

Examples of actions



Gender Equality Actions

Inclusive recruitment practices

Flexible working support

Career progression initiatives

Pay and promotion transparency

Menopause Support Actions

Manager training

Workplace adjustments

Occupational health support

Employee networks and guidance



Gender Equality Action Plans

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Specify whether each action is:

- **new or in progress** – this means you will be working on it for the first time or building on something you are already doing
- **embedded** – this means it is already an established part of your working practice
- employers must choose at least 2 actions that are ‘new or in progress’
- supporting narrative about each action and about your overall action plan
 - why your organisation has chosen this action
 - how you will track and understand whether this action is improving gender equality in your organisation
 - 100 words of narrative per action
 - 200 words of narrative for overall action plan



Preparing for April 2027

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- Identify key drivers of gender inequality within the organisation via a review of recruitment, promotion, retention, performance ratings, flexible working uptake and senior leadership representation
- Engage with employees through surveys, focus groups etc to understand barriers to gender equality
- Identify and prioritise areas of greatest inequality for action
- Allocate responsibility for gender equality outcomes at senior leadership level and ensure regular reporting
- Develop measurable objectives and consider how progress against an action plan can be monitored

Questions

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