



HR UPDATE:

DEALING WITH SEXUAL HARASSMENT

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The #metoo campaign has sparked a huge movement of women to speak more openly about their experiences.

We are advising more and more business owners regarding sexual harassment allegations in their workplace - it's important they understand the movement and its potential implications.

For those in industries such as hospitality who often earn the minimum wage, pursuing claims has often been unattainable due to the cost outweighing the potential benefit.

The Women and Equalities Commission (a Parliamentary committee) has recognised this and produced a report on Sexual Harassment in the Workplace which contains recommendations for the government and eloquently illustrates how the law is likely to move forward in this area.

It's great news for employees, but a risk that employers need to be aware of when reviewing their practices, no matter how small they are.

For information on preventing sexual harassment in the workplace, get in contact. BII Members can call the free Legal & HR Helpline any time about this, or any other issue, on:

0330 058 3878

SEXUAL HARASSMENT REPORT RECOMMENDATIONS:

1 **PUT SEXUAL HARASSMENT AT THE TOP OF THE AGENDA**

This places a positive duty on employers to protect employees from harassment, not just a duty to react when things go wrong.

This would mean that employers need to clearly set out the types of behaviour that is not allowed and the sanctions when those behaviours occur, rather than just disciplining staff once someone puts in a grievance.

This can be done through having a well-drafted company handbook or through an induction and we would advise is best practice even currently. Clients often ask us for advice on how to handle allegations of sexual harassment in pub and restaurant environments where the harassment takes the form of 'on the line' comments made behind a bar whilst busy on shift. This is the kind of behaviour the recommendations will be seeking to ensure do not slip through the net.

2 **REQUIRE REGULATORS TO TAKE A MORE ACTIVE ROLE**

'The Health and Safety Executive in particular must take up its share of the burden of holding employers to account if they fail to take reasonable steps to protect workers from sexual harassment.' Regulation from the HSE would lead to employers having to conduct sexual harassment risk assessments and a result mitigate risks that were identified as they currently do with Health and Safety.

3 **RECOMMENDATIONS TO IMPROVE THESE PROCESSES INCLUDE:**

- A statutory code of practice to accompany the mandatory duty which would set the standards in how employers respond to harassment claims. Whether or not employers followed the code of practice would form evidence as to whether or not they breached their duty.

It would also give rise to uplift of 25% in compensation in an employment tribunal where the code had not been followed, as with the ACAS code now. It's really important that employers follow the right procedure from the start, even when a complaint seems trivial.



- ‘Tribunals should be able to award punitive damages and there should be a presumption that tribunals will normally require employers to pay employees’ costs if the employer loses a discrimination case in which sexual harassment has been alleged’. This would be a huge step in facilitating access to justice. At the moment, despite removal of tribunal fees, the cost of legal representation is still a heavy burden to bear for claimants with the unlikely prospect of a costs order being made in most situations.

- Extension of the 3 month timescale to bring a claim (to 6 months) for ALL discrimination claims and pause the clock until internal procedures are resolved. This doesn’t require elaboration. It would remove another significant barrier to claimants and further increase the risk of employers being taken to tribunals.

Don’t forget – employment tribunal claims increased by over 90% when fees were abolished! We would probably see a similar pattern here.

4 **Clean up the use of non-disclosure agreements.**

The definition of protected disclosures and prescribed persons under whistleblowing legislation should be widened to include disclosures of sexual harassment to the police and all regulators, including the Equality and Human Rights Commission and Health and Safety Executive, and to any court or tribunal.’

This recommendation would see the end of in settlement agreements where the dispute is centred around a sexual harassment allegation. This has been a huge problem as evidence of harassment is swept under the carpet to prevent reputational damage.

5 **Collect robust data**

This recommendation outlines the way in which sexual harassment will be monitored by the government including proposition of large-scale surveys which delve much deeper than tribunal findings. You may have seen the figures recently regarding those companies exposed for not paying the NMW including small businesses, this gives us an idea of what a large-scale survey may look like in terms of the investigation part, whether or not those findings would be published was not clarified in the report.

