

# Preventing Sexual Harassment in the Workplace

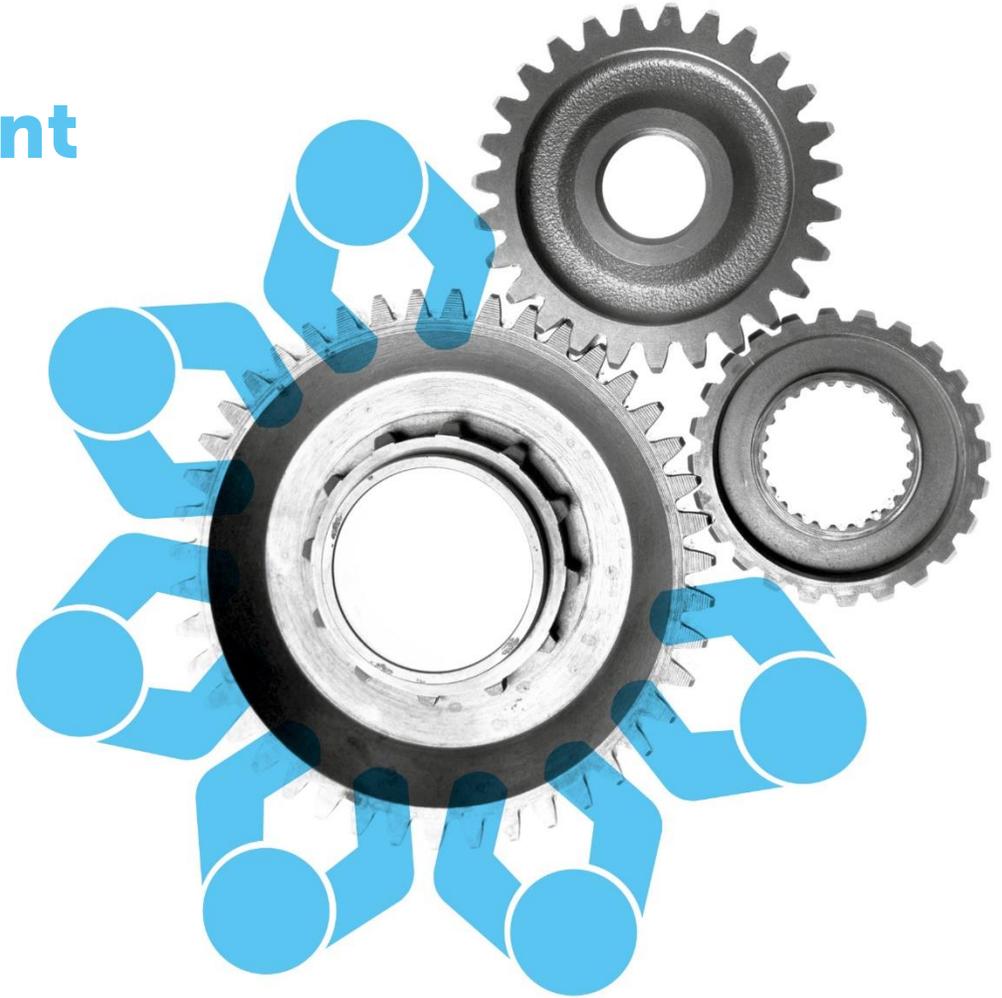
Internal training

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12 November 2024



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*Partner*



# Sexual harassment

A significant workplace issue



- 20% UK population has encountered workplace sexual harassment (all genders)
- 79% women do not report it
- 18% have been harassed by a third party
- Compensation can be significant
- But reputational damage can be even bigger!

***A former underwriter awarded £1.3m by a UK employment tribunal (2023)***

***Banker wins £2m for sexual discrimination in "witch hat" case (2022)***

***Sexual harassment allegations cost local authorities at least £2.5m since 2018 (2023)***



## Sexual harassment

A reminder - definition under section 26(2) of the Equality Act 2010

**Sexual harassment** occurs where both:

- **A** engages in unwanted conduct of a sexual nature and
- The conduct has the purpose or effect of either violating **B**'s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for **B**.





## Sex Harassment ≠ Sexual Harassment

A comment to a woman about her breasts

=

Sexual harassment

A comment to a man about his balding head

=

Sex harassment



A one-off incident  
is sufficient

Intent is not  
required

The complainer  
need not be the  
target

Conduct can be  
verbal, non-verbal  
or physical

Long-standing  
tolerance is not  
sufficient excuse

## “Banter”

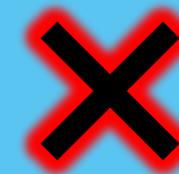
When does it amount to sexual harassment?



Banter

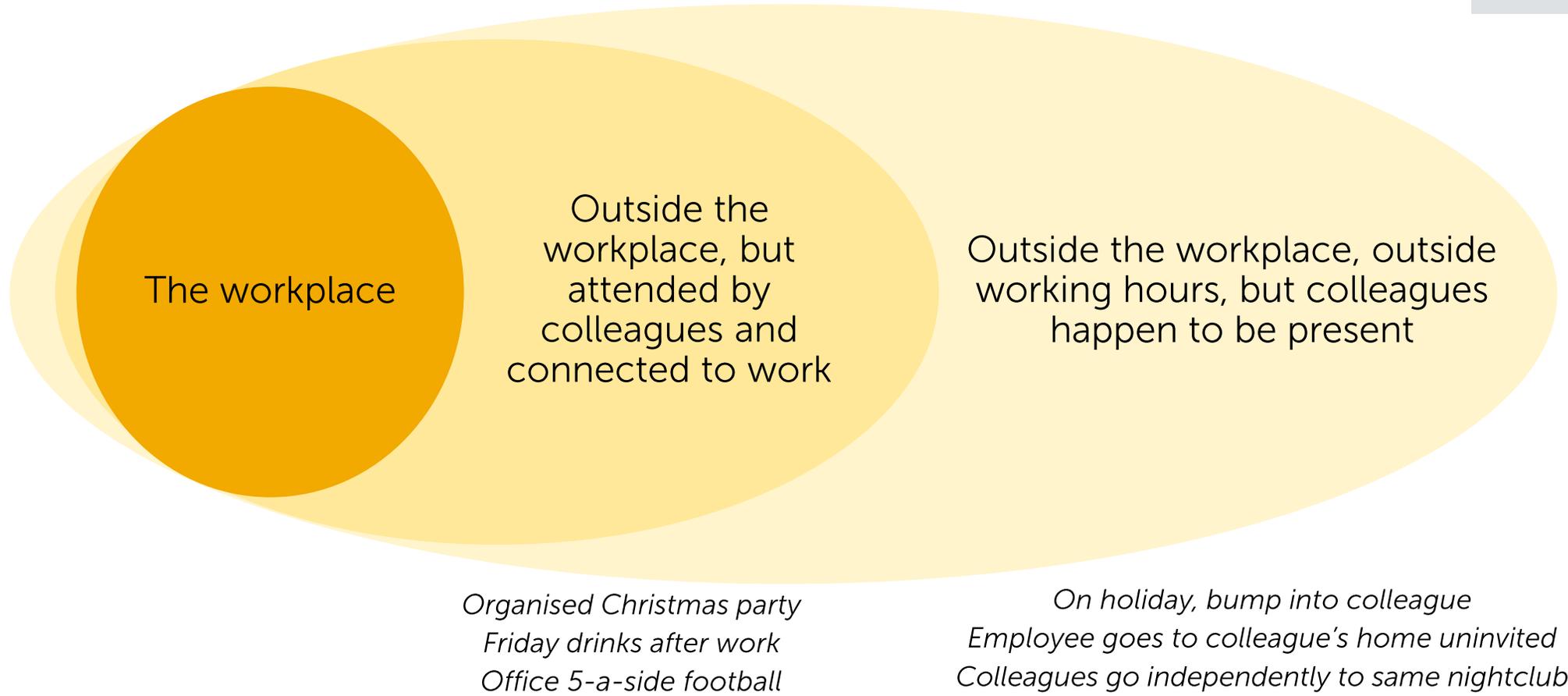


Unwanted banter



# Incidents away from the workplace

Is it an extension of the employment or is the connection too weak?



# Sexual harassment

The new preventative duty



## Worker Protection (Amendment of Equality Act 2010) Act

Comes into force on  
26 October 2024

Requires employers  
to take reasonable  
steps to prevent the  
sexual harassment  
of employees during  
the course of their  
employment

In addition to the  
existing legal  
protections against  
harassment

Tribunals will have  
power to uplift  
sexual harassment  
compensation by up  
to 25% where an  
employer is found to  
have breached the  
new duty to prevent  
sexual harassment

**Note:** the new duty applies to sexual harassment (and not other forms of harassment)

# Sexual harassment

Steps towards legal change



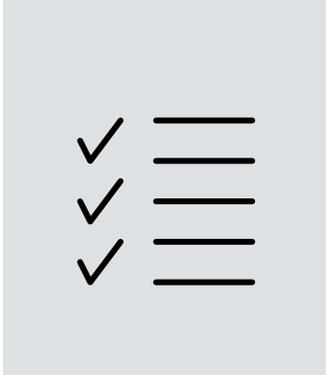
Employers will now have a **legal** duty to be **proactive** with very specific (and potentially significant) financial consequences.

It does **not** require employers to take **all** reasonable steps.

It does **not** reintroduce the express duty to protect workers against harassment by third parties.

# EHRC Updated Technical Guidance

Sexual harassment and harassment at work

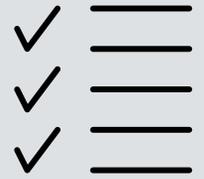


## 8 Step Guide for Preventing sexual harassment



# Reasonable Steps

EHRC updated technical guidance



Consider:

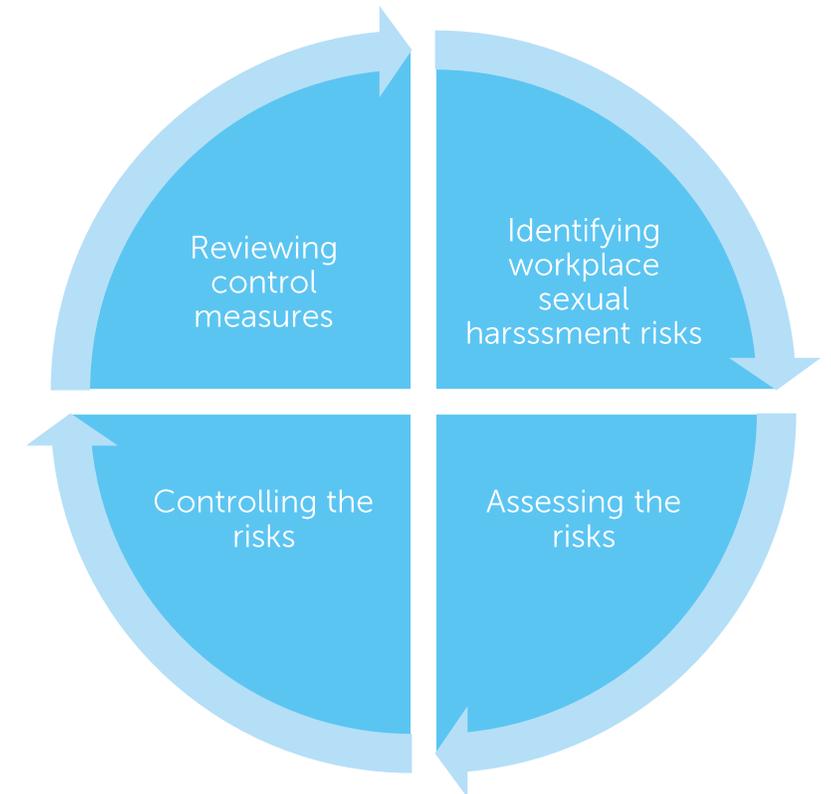
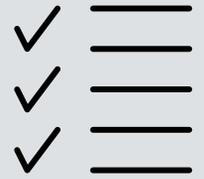
- the size and resources of the employer
- the nature of the working environment
- the sector the employer operates in
- the risks present in that workplace
- the nature of any contact with third parties
- the likely effect of taking a particular step and whether an alternative step could be more effective
- the time, cost and potential disruption of taking a particular step, weighed against the benefit it could achieve
- concerns raised
- compliance with any relevant regulatory standards
- whether steps taken appear to have been effective or ineffective

# Assessing and take steps to reduce workplace risk

## Key principles

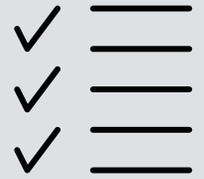
### Principles

- a positive legal duty to prevent the sexual harassment of workers
- reasonable steps to prevent – includes harassment by own colleagues and by workers of third parties such as clients and customers
- an anticipatory duty
- what is reasonable will vary from employer to employer
- all employers must consider the risks of sexual harassment occurring and implement reasonable preventative measures
- a risk assessment is not a one-off exercise
- multiple risk assessments may be necessary
- don't forget data privacy considerations



# The preventative duty

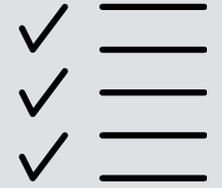
What's expected next?



The new Government has committed to:

- introduce protection from harassment by third parties
- strengthen an employer's duty to take all reasonable steps (not just reasonable steps) to prevent sexual harassment
- update whistleblowing protections for women who report sexual harassment
- strengthen the law around NDAs?

In the meantime, the EHRC is expected to update the Code of Practice to reflect the new preventative duty



## Summary

### Key Takeaways

- Positive legal duty
- Includes harassment by own colleagues and by third parties
- Anticipatory duty
- Reasonable steps: will vary depending on employer
- Risk assessment is a continuous exercise
- Data privacy

# Questions?



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