

TORQUELAW



2024 Employment Law Priorities

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Today's topics

- Duty to prevent sexual harassment
- Post election priorities: Employment Rights Bill
 - Prevention of harassment
 - Contracts and pay
 - Work-life balance
 - Family leave
 - Employment Tribunal claims
- Labour proposals still to come
 - Dismissals
 - Employment Status
 - Family leave
 - Work-life balance
- Holiday pay

Introduction

- 26th October 2024: new legal duty to prevent sexual harassment
- Updated Equality and Human Rights Commission Guidance
- What steps should employers be taking now
- Consequences of breach

s26(2) Equality Act 2010:

“unwanted conduct of a sexual nature which has the purpose or effect of

- *violating an individual’s dignity; or*
- *creating an intimidating, hostile, degrading, humiliating or offensive environment “*

s40A Equality Act 2010:

(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 or the kind described in section 26(2) EqA (unwanted conduct of a sexual nature)

Applied from **26th October 2024**



Employer 8-step guide: Preventing sexual harassment at work

1. Develop an effective anti-harassment policy
2. Engage your staff
3. Assess and take steps to reduce risk in your workplace
4. Reporting
5. Training
6. What to do when a harassment complaint is made
7. Dealing with harassment by third parties
8. Monitor and evaluate your actions

Employers must make their own decision about what reasonable steps they should take

Factors to determine reasonableness

- Employer's size and resources
- Sector in which the employer operates
- Nature of the working environment
- Risks present in the workplace
- Nature of any contact with third parties
- The time, cost and potential disruption of taking a particular step v the benefit it could achieve
- Whether concerns have been raised with an employer about sexual harassment in the past

Assessments should identify the risk of sexual harassment occurring and measures to minimise those risks

Example risk factors

- Power imbalances
- Lone and night working
- Customer-facing duties
- Lack of diversity in the workforce
- Workers being placed on secondment
- Work locations - different/third party sites, home, event attendance
- Social media contact between workers
- Workforce demographic

Third-party sexual harassment

- Preventative duty extends to harassment by third parties, e.g. customers, freelancers or members of the public
- Should be included in the risk assessment and mitigations

- Additional claim from employees
 - But not currently a standalone claim
- ETs can apply up to 25% uplift in compensation where worker has a free-standing claim of sexual harassment which is successful
- EHRC can take enforcement action against the employer, including:
 - Investigating an employer
 - Issuing an unlawful act notice
 - Entering into a formal, legally binding agreement with an employer to prevent future unlawful acts
 - Asking the court for an injunction to restrain an employer from committing an unlawful act in the future

Employment Rights Bill

Bill passage



- **Promised:**
 - Extension of new duty to prevent sexual harassment in the workplace
 - All reasonable steps
 - Third party harassment
- **What we know now:**
 - Regulations will specify the ‘all reasonable steps’ expected from employers
 - New category of protected disclosure re sexual harassment under the Equality Act 2010
 - Employers required to take all reasonable steps to prevent a third party unlawfully harassing employees
- **What to do now:**
 - Carefully comply with new duties to prevent sexual harassment and consider what else you could do

- **Promised:**
 - Exploitative ZHC to be outlawed
 - Anti-avoidance measures introduced
- **What we know now:**
 - Zero- and low-hours workers will have the right to be offered guaranteed hours if they work regular hours over a defined period
 - Offer based on work done in reference period:
 - Days of the week and hours; or
 - Working pattern
 - Failure to make offer : result in a claim to ET for compensation only (subject to duty to mitigate)
- **What to do now**
 - Critically assess use of ZHCs, consider whether regular hours or fixed-term contracts could be used

- **What else we know now:**
 - Reasonable notice must be given to workers of
 - Shift times
 - Changes to or cancellation of a shift
 - Payments to be made in event of cancelled, curtailed or moved shifts with short notice
 - Regulations will set out the minimum period of notice and the payment arrangements
- **What to do now**
 - Decide what may be reasonable based on industry/work patterns
 - Review current internal practices around the provision of notice to shift workers

- **Promised:**
 - Removal of age bands
 - Closer alignment to cost of living/genuine living wage
- **What we know now:**
 - 2025 rates announced

	NLW	18 to 20	Under 18	Apprentice
2024/5	£11.44	£8.60	£6.40	£6.40
2025/6	£12.21	£10.00	£7.55	£7.55
% increase	6.7	16.2	17.9	17.9

- **What to do now:**
 - Audit staff in lower age NMW brackets and/or at or near NMW rates to assess likely impact

- **Promised:**
 - Statutory sick pay (SSP)
 - Increased value
 - Widening of scope
 - Removal of waiting period
- **What we know now:**
 - SSP to be paid from the first day of sickness absence, rather than 4th day (days 1 to 3 will no longer be waiting days)
 - Minimum earnings threshold (£123/week) removed
 - SSP to be set at lower of statutory rate and % of employee earnings
- **What to do now:**
 - Review absence management policies and consider trigger points for formal review

- **Promised**
 - End to “one sided flexibility” and abuse of ‘fire and re-hire’
- **What we know now:**
 - Limited right for employers to embark on a ‘fire and rehire’ and ‘fire and replace’ exercises
 - Strengthening the Code of Practice
 - Dismissals will be automatically unfair where the reason for the dismissal is that the employee did not agree to a variation of contract
 - Limited exception: financial constraints necessitate the variation, and the employer could not reasonably avoid the need to make the variation i.e. no reasonable alternative

- **Promised:**
 - Change in emphasis from a right to request flexible working to a right to work flexibly unless there are justifiable grounds for refusal
- **What we know now:**
 - Flexible working requests must be granted unless:
 - Employer can refuse on one or more of the statutory grounds; and
 - Employer's refusal is reasonable
 - Statutory grounds unchanged
- **What to do now:**
 - Start adopting a 'why not' approach to flexible working requests

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- **Promised:**
 - Review of existing parental leave system to give working parents better support
 - **What we know now:**
 - Qualifying periods of employment for paternity and unpaid parental leave scrapped - to become Day 1 rights
 - Paternity leave and pay to be taken after shared parental leave and pay, which is currently not permitted
 - Planned expansion of right to bereavement leave beyond parental bereavement leave
 - **What to do now:**
 - Review Handbooks to remove any qualifying periods for paternity and unpaid parental leave
 - Review / amend shared parental leave policy

- **Promised:**
 - Extension of time limit to bring Tribunal claims to allow more time for the parties to conciliate or reach agreement
- **What we know now:**
 - The time-limit for bringing most claims will be extended from 3 months to 6 months (from date of dismissal or act of discrimination etc)
- **What to do now:**
 - Consider alternative dispute resolution mechanisms e.g. mediation

What is still to come?



- **Promised:**
 - All workers to be able to claim unfair dismissal from day 1 of their employment
- **What we know now:**
 - No qualifying period of service for *employees*: Day 1 right
 - Some modification where the “dismissal” takes place during the “initial period of employment”, provided:
 - Reason is capability, conduct, SOSR or illegality
 - Lighter touch process must still be followed
 - Government proposing an initial period of 9 months
 - Dismissal must take effect during IP or have served notice during IP with effective date of termination 3 months later
- **What to do now:**
 - Arguably nothing - might want to revise probationary period
 - Invest in improved recruitment practices

- **Promised:**
 - Move from distinct categories of *employee* and *worker* towards a single worker status
 - Enhance rights for self-employed
- **What we know now:**
 - Separate consultation will take place with a view to ensuring that:
 - There is a distinction between workers and the genuinely self employed
 - All workers know their rights
- **What to do now:**
 - Consider reviewing employment status of any ‘workers’ or ‘freelancers’

- **Promised:**
 - Implementation of paid carer's leave
 - Updates to parental leave
- **Still to come:**
 - Wider review of parental leave still promised beyond these areas
 - Consideration of paid carer's leave
- **What to do now:**
 - Consider any internal policy on carer's and parental leave entitlements

- **Promised:**
 - Right to disconnect would be introduced
 - Prevention of routine after-hours contact, but permitted on an 'as and when needed' basis
- **What we know now:**
 - Consultation will take place, but not included in Bill
- **What to do now:**
 - Consider internal working practices and whether it is appropriate to introduce guidance
 - Be aware that duty of mutual trust and confidence will cover these communications in any event

- Equality (Race and Disability Bill)
 - Equal pay changes
 - Mandatory employer reporting
- Non-legislative: delivery far quicker to achieve :
 - Modernising health & safety guidance
 - Supporting workers with a terminal illness through the Dying to Work charter
 - Developing menopause guidance for employers and guidance on health and well-being
- Yet to come:
 - Holistic review of TUPE
 - Collective grievances
 - Increased protections for the self employed
 - Review of H&S guidance and regulations

Holiday pay changes

Holiday pay for irregular hours and part-year workers

Option 1

For the holiday year after 1 April 2024 these workers:

- Accrue holiday at 12.07% of hours worked (rounded up or down to the nearest hour)
- Must be paid for all holiday at “normal remuneration”
 - No distinction between 4 weeks WTR leave and 1.6 weeks UK leave
- Accrue holiday whilst on sick/statutory leave - based upon average hours worked over last 52 weeks
- Are not entitled to payment in lieu, except on termination

Holiday pay for irregular hours and part-year workers

Option 2

Employer can choose to pay rolled-up holiday pay meaning that they should:

- Uplift remuneration by 12.07% for each pay period
- Show the amount of holiday pay paid on payslips
- Allow workers to take holiday
 - But make no payment when holiday is taken
- Pay rolled up holiday pay whilst on worker is on sick or statutory leave - equal to average amount of holiday pay over last 52 weeks

Holiday pay for irregular hours and part-year workers

Action points:

- Identify irregular hours and/or part-year workers
- Check that contracts accurately reflect worker status and related holiday entitlement
- Decide whether you will accrue holiday at 12.07% or implement rolled-up holiday pay
- Set procedures for calculating holiday entitlement for workers on sick or statutory leave

Workers can carry over holiday if the employer fails to:

- Recognise a worker's right to annual leave
- Give the worker a reasonable opportunity to take leave or encourage them to do so
- Inform the worker that leave not taken by the end of the leave year will be lost
- Pay a worker for leave they have taken

Action points:

- Update handbooks/policies to:
 - Encourage workers to take leave
 - Make clear that leave not taken will be lost
- Manage uptake of holiday during the leave year
- Specifically notify workers that leave not taken will be lost

Enforcement

Carry over will continue until:

- The employer rectifies the breach

OR

- Worker entitled to be paid on termination of employment
 - no 2 year cut off

Thanks for listening



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Our next events

TORQUELAW

27 November: Prevention of Sexual Harassment seminar a deep dive into the new duty on employers and practical guidance on how best to comply (virtual - £120 + VAT)

5 December: Festive case round up (virtual)

23 January: Employment Law Update (in-person - £60 + VAT)

11 February: Unfair Dismissal - back to basics (virtual)

19 March: Managers' Essential Employment Law course (in person - £450 + VAT)

Full details at torquelaw.co.uk/events