

NEW EMPLOYMENT LEGISLATION

Employees protected from harassment by third parties.

Employers can now be sued if a worker suffers harassment at the hands of someone not employed by the employer, for example a customer, supplier or other third party that the employee encounters in the course of their employment.

In the High Court case of *Equal Opportunities Commission v Secretary of State for Trade and Industry* 2007, it was held that the Employment Equality (Sex Discrimination) Regulations 2005 did not adequately implement EU law (the Equal Treatment Directive). The **Sex Discrimination Act 1975 (Amendment) Regulations SI 2008/656** amend the Sex Discrimination Act 1975 and have been effective from the 6th April 2008.

The Regulations **impose a new liability for employers who fail to protect an employee from third-party harassment**. The employer is liable where:

- a **third party** subjects a person to sexual harassment in the course of their employment;
- the employer has failed to take such steps as would have been reasonably practicable to **prevent the third party** from doing so; and
- the employer knows that the person has been subjected to harassment in the course of their employment **on at least two other occasions by a third party**.

The new legislation affects any organisation that employs staff dealing with third parties (i.e. customers, clients, visitors, suppliers, members, patrons, volunteers etc). The hotel, catering, pub, club, retail and leisure industry are probably most at risk of these claims but **all** employers are potentially at risk. Employees working in a potentially confrontational situation with the public, particularly where alcohol is served, or with vulnerable groups, may be more likely to be subjected to third-party harassment in the course of their employment.

To give but one example, a bar owner may be liable for harassment of his staff by customers if the owner or managers knew the harassment had taken place on more than one occasion before but had failed to take reasonable steps to prevent it happening again.

Failing to take action, could result in employers being put to the cost of defending claims under the Sex Discrimination Act 1975, which may be potentially of substantial value. These claims could also include compensation for injury to feelings up to £25,000.

KBL Comment :

Employers must now assess carefully at what point it will become appropriate to warn customers (or other third parties) about their behaviour and/or ask customers (or other third parties) to leave the premises, if they do not heed those warnings. In reality this may prove to be a very difficult decision and therefore clear policies, procedures and rules, for employees and customers (or other third parties), are going to become vital. Indeed visitor and guest policies in relation to 'acceptable standards of behaviour' are likely, in our view, to become common place.

In our experience employers are often reluctant to tackle complaints about customers (or other third parties). However, with this new legislation, taking no action now poses a significant risk. Of course there may be other solutions that avoid raising the complaint directly with a customer, client etc, for example, asking the employee to move to a different customer but this of itself could pose risks, unless carefully managed.

We can envisage situations where leisure and retail trade staff bring claims against employers where no action has been taken to prevent regular customers harassing staff. A badly behaved patron may now result in claims against the employer, unless an employer is able to show it has taken all reasonable steps to protect its staff.

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