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The ONE Group

HARASSMENT AT WORK: PREPARING FOR THE NEW EMPLOYER DUTIES

A WHITE PAPER FROM AN EVENT HOSTED BY THE ONE GROUP IN PARTNERSHIP WITH HOWES PERCIVAL, NORTHAMPTON, OCT 21, 2026

A White Paper by The ONE Group

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Executive Summary

From 30 October 2026, employers in Great Britain must take all reasonable steps to prevent sexual harassment of their staff, and they become liable for harassment of their staff by third parties such as clients, customers and suppliers. Both changes come from the Employment Rights Act 2025. The government's regulations setting out what "all reasonable steps" means are not expected until 2027 at the earliest, so employers have to comply before they know exactly what compliance looks like.

This paper draws on Sexual Harassment: Prevention, Response and Employer Liability, the third session in The One Group's Discrimination Series for HR professionals and business leaders. The session was hosted by The One Group in partnership with law firm Howes Percival, whose employment lawyers led it. It covers the legal definition of harassment, how employer liability and compensation work, what the new duties require, and two worked scenarios based on real cases. It closes with a practical action plan and the questions HR leaders in the room raised.

The central message from the session was simple. A risk assessment that is specific to your organisation, built with input from the people who face the risk, kept under review and properly documented, is the foundation everything else rests on. Policies and training matter, but only if they are embedded and can be shown to work.

Why This Matters Now

Harassment at work is common and mostly unreported. Polling figures cited at the seminar suggested that three in five people have experienced sexual harassment at work, but only around 30% told their employer. Among workers aged 24 to 35 the figure rose to four in five. Separate polling put the share of workplace harassment incidents involving a third party at close to 40%.

A show of hands in the room made the same point. A good number of attendees had dealt with at least one sexual harassment complaint in the previous year.

The legal framework is tightening in two ways:

Date	Change	Effect on employers
October 2024	Duty to take reasonable steps to prevent sexual harassment	Proactive duty; breach can add up to 25% to compensation
30 October 2026	Duty becomes "all reasonable steps"	Same test as the employer's defence, a much higher bar
30 October 2026	Liability for harassment by third parties	Covers all relevant protected characteristics, not only sex
2027 onwards (expected)	Regulations defining reasonable steps	Detail on how to comply arrives after the duty starts

The speakers' advice for the gap between the duty starting and the regulations arriving was to work from the existing Equality and Human Rights Commission (EHRC) guidance and to treat the new deadline as a prompt to revisit what is already in place.

What Counts As Harassment

Harassment under the Equality Act 2010 is a specific form of unlawful discrimination. It is not another word for bullying, rudeness or firm management, although bullying can amount to harassment if it meets the statutory test. Many complaints that use the word "harassment" describe conduct the employee dislikes but which has no link to a protected characteristic.



Who Is Protected

The protection reaches further than employees in the narrow sense. It covers job applicants, workers, some agency workers and some self-employed people who personally provide services. In certain circumstances it also covers former employees. References are the common example: if someone raised a discrimination complaint while employed and then receives a poor reference, the reason for that reference will be scrutinised.

Which Characteristics Apply

Seven of the nine protected characteristics are covered by the harassment provisions: age, disability, gender reassignment, race, religion or belief, sex and sexual orientation. Marriage and civil partnership, and pregnancy and maternity, are not. Someone harassed because they are pregnant may still have a claim framed as harassment related to sex.

The person harassed does not need to have the characteristic. Racist abuse aimed at an employee's partner can be harassment of the employee. In English v Thomas Sanderson Blinds, the Court of Appeal held that sustained homophobic "banter" aimed at a man everyone knew was not gay could still be harassment, because the conduct itself related to sexual orientation.

The Three Types

Type	What it requires
Harassment related to a protected characteristic	Unwanted conduct related to the characteristic, with the purpose or effect of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment
Sexual harassment	Unwanted conduct of a sexual nature with the same purpose or effect

Type	What it requires
Less favourable treatment for rejecting or submitting	Treating someone worse because they rejected, or submitted to, sexual conduct or conduct related to sex or gender reassignment

The difference between the first two matters in practice. In Finn v British Bung Manufacturing, a manager called an employee "bald" and threatened him. The tribunal found this was harassment related to sex, because baldness is far more common in men, but it was not sexual harassment, because the remarks had no sexual nature.

The third type is rare in practice. The classic example is a manager who propositions a colleague, is turned down, and then blocks her promotion. Claimants in this position more often bring victimisation claims, which are a separate cause of action.

How Tribunals Judge The Effect

Most cases turn on effect rather than purpose. Few people set out to harass, and "it was only a joke" is not a defence. Tribunals look at three things: the claimant's perception, the other circumstances of the case, and whether it was reasonable for the conduct to have that effect.

The claimant must know about the conduct at the time. Circumstances include seniority, the claimant's health, workplace culture and the setting. Reasonableness cuts both ways. In Heafield v Times Newspaper, an editor shouting a profane question about a delayed story concerning the Pope was found not to be religious harassment of a Catholic colleague, because it related to deadline pressure and taking offence was not reasonable.

A single incident can be enough. In Insitu Cleaning v Heads, one lewd remark about a junior employee's breasts was held to be sex discrimination, and the fact that she did not object at the time did not make it welcome. Equally, someone who joined in with banter for months can later draw a line, and conduct that continues after that point can be harassment.

The workplace extends well beyond the office. Christmas parties, client events, taxis an employer arranges home, and work WhatsApp groups used outside hours can all fall within the course of employment.

Liability, The Defence and Compensation

An employer is liable for harassment its employees commit in the course of employment, whether or not it knew or approved. The only escape is the statutory defence: showing it took all reasonable steps to prevent the harassment before it happened. Responding well to a complaint afterwards does not count towards the defence.

Why The Defence Usually Fails

Tribunals take two steps. First they list what the employer did. Then they ask whether there was anything else it could reasonably have done. A claimant only needs to identify one missing step, and the defence can fail even if that step would not have prevented the particular incident. Cost, practicality and likely effectiveness are all weighed.

Policies and training help only if they are embedded. A policy pinned to a noticeboard nobody reads will not do. Training must reach everyone, especially senior managers, be refreshed regularly and address the organisation's own risks. In one Employment Appeal Tribunal decision the employer lost the defence because training was stale and managers had ignored complaints, which showed it had not worked.

Who Pays

Claims are usually brought against the employer, but individual employees can be named as respondents and held personally liable. The speakers recommended making staff, and managers in particular, aware of this. In their experience it gets attention in a way that policy reminders do not.

Compensation for discrimination is uncapped. It can include financial losses, injury to feelings, personal injury such as psychiatric harm, and aggravated damages where the employer behaved badly, for example by covering up, failing to apologise or obstructing the claim. Tribunals can also recommend steps such as new policies or training.

Injury To Feelings: The Vento Bands

Band	Typical case	Example from the seminar
Lower	Isolated or one-off incidents	A mixed-race recruitment consultant subjected to a series of remarks drawing on racial stereotypes, some not meant unkindly, was awarded £8,500
Middle	Serious cases not meriting the top band	A beauty therapist harassed by the salon owner over time, including requests for a full body massage and comments on her body, resigned and received £17,000; the power imbalance weighed heavily
Upper	The most serious cases, such as sustained campaigns	An employee subjected to 26 acts of sexual harassment and 8 of victimisation, later diagnosed with anxiety and depression, received a total award reported at around £357,000 including aggravated damages

The lower band example shows that comments which each seem minor can add up to harassment when viewed together. Since October 2024, a breach of the duty to prevent sexual harassment can increase compensation by up to 25%. On the upper band case, that alone would have added close to £90,000.

The Duty To Prevent Sexual Harassment

Since October 2024, employers have had a proactive duty to take reasonable steps to prevent sexual harassment of employees in the course of their employment. It requires employers to anticipate the risks in their own workplace and act before anything happens. It is not a standalone claim, but a breach can lift compensation in a successful sexual harassment claim by up to 25%.

From 30 October 2026 the wording becomes "all reasonable steps". The change brings the duty into line with the statutory defence described above, and it raises the bar sharply. Today an employer can argue that what it did was reasonable. After the change, a claimant can point to a single step that was not taken and the employer may be found in breach.

Until the regulations arrive, the EHRC guidance and technical guidance remain the best guide. Its recommendations include:

- A sexual harassment risk assessment specific to the organisation
- An effective policy that staff actually know about
- Meaningful engagement with staff on the issue
- Clear and accessible reporting channels
- Regular training, refreshed and kept up to date
- Prompt investigation of complaints
- Ongoing monitoring that learns from past incidents

The speakers' practical advice was to step back and test what is already in place against the real risks in the working environment, rather than assume existing measures will meet the higher standard.

The New Third-Party Harassment Duty

From 30 October 2026, employers will be liable when a third party harasses one of their employees in the course of employment, unless the employer took all reasonable steps to prevent it. Unlike the sexual harassment duty, this applies to harassment related to any of the relevant protected characteristics. There is currently no equivalent liability, so this is new ground for most organisations.

When Liability Arises

Three questions decide whether an employer is liable:

1. Does the third party's conduct meet the Equality Act definition of harassment? Rudeness, unreasonable behaviour or ordinary conflict usually will not.
2. Did it happen in the course of the employee's employment? That includes situations the employer required, arranged, encouraged or benefited from, such as client meetings, networking events and work socials.
3. Did the employer fail to take all reasonable steps to prevent it?

Take a customer service agent who receives homophobic abuse on a call. Reasonable controls might include a warning script, the right to end the call, fast escalation to a manager, call recording where lawful, and a process for restricting repeat callers. Telling staff to stay professional is unlikely to be enough.

Who Counts As A Third Party

The speakers advised mapping relationships rather than relying on labels. Customers, clients, service users, suppliers, contractors and members of the public can all be third parties. The question is how they interact with staff: face to face, by phone, by email, online, or in group settings where a remark is overheard.

Different relationships call for different controls. Where there is an ongoing contract, the employer has levers: clauses prohibiting harassment of its staff, agreed investigation protocols, site rules and early termination rights. A regular customer who visits every week calls for a different response from a high-volume stream of one-off visitors. Managers need a graduated range of responses they can choose from based on the facts.



What "Reasonable" Will Depend On

Factor	How it affects the steps expected
Size and resources	A large employer with deep management structures will be expected to do more, but a small employer is not exempt
Cost	Relevant but not decisive; low-cost measures such as clear instructions and escalation routes still count
Sector	Retail and hospitality face frequent, volatile public contact; professional services may face rarer but higher-risk situations
Environment and role	Lone working, late hours, alcohol and venue layout all change the risk
Frequency	A rare risk, or one affecting a single employee, can still justify action

The duty also has to be balanced against other rights, including freedom of expression and of religion or belief. A blanket ban on discussing home life at work, for example, would be unreasonable. Where an employer decides a step is disproportionate, it should record why. A reasoned decision based on evidence is far easier to defend than an unrecorded assumption that existing policies are enough.

Case Study 1 : An Internal Complaint

The first workshop scenario, based on a real case, involved a car dealership. A junior sales employee, Employee A, complained that while she and a senior colleague, Colleague B, were alone in the showroom, he showed her a decades-old photo of himself in very small swimwear and asked, laughing, what she thought of it. She said she was shocked, mumbled a reply and moved away.

Is it harassment?

The group agreed it likely was. The conduct was of a sexual nature: he chose the photo and drew attention to his body. Employee A described shock and discomfort, which goes to effect. Several factors strengthened her position: the seniority gap, the fact they were alone, and that he did not ask whether she wanted to see it.

Possible arguments for Colleague B, such as it being a holiday snap, banter, a one-off or a joke, carried little weight. A single incident can be enough, and banter is not a defence. Reversing the genders would not change the analysis. The test is the same whoever is involved.

The investigation

The complainant's interview notes were thin. The speakers would have asked far more: who else was around, what happened before and after, and how she avoided him for the rest of the day. Open questions such as "tell me how this came about" work better than leading ones that sound like a challenge.

Colleague B's account presented the exchange as mutual and lighthearted. When asked if he invited comment on his body, he denied it outright and threatened a counter grievance. The speakers noted that this response is common and says little either way about what happened.

With one person's word against another's, the next step is to look for anything that tips the balance:

- CCTV, to see whether she moved away quickly and kept her distance, before footage is overwritten
- Colleagues who arrived later that day and noticed an awkward atmosphere
- A further interview with the complainant to clarify details
- An interview with a third colleague, Colleague C, who by his own account had also been shown the photo

If he did raise a counter grievance, it should be taken at face value and run through the normal process, alongside the original complaint, while staying alert to whether it is vexatious.

Outcome and sanction

If harassment is upheld, most of the room leaned towards a final written warning. The speakers said dismissal can be justified, particularly where the disciplinary policy lists harassment as gross misconduct, but it should not follow automatically. The decision should weigh exactly what was upheld, its seriousness, the power imbalance and his disciplinary record. Twenty years of clean service is different from an existing final warning.

Afterwards, the employer should review its risk assessment, especially whether it addresses small groups working alone and seniority gaps. It should add a protocol for preserving CCTV early in an investigation and record every step taken. Re-sending the harassment policy on its own would not be enough.

Potential claims

Employee A could bring a sexual harassment claim against the employer and against Colleague B personally. Dismissing him would not remove the employer's liability. In practice claimants tend to sue only the employer because it can pay, but naming the individual as well can shift the dynamics towards settlement.

The scenario then moved on. Colleague B is dismissed. Colleague C becomes Employee A's line manager and fails her probation, saying she cannot trust her after what happened and that she is not a team player. That points strongly to victimisation: raising the complaint was a protected act, and dismissal is a clear detriment. Managers' comments like these, especially if written down, make the claimant's case for them.

The lesson is not that a complainant becomes untouchable. Genuine performance issues can still be managed, but with a different manager, a clear record and careful thought about timing. That separation is harder to achieve in a small organisation, so it needs more deliberate planning there.

Case Study 2 : A Client At A Work Event

The second scenario tested the third-party duty. The same dealership holds an annual charity fundraiser. Attendance is compulsory, and the employee who raises the most in donations earns a sizeable bonus. Staff are told to look after clients. A free bar opens at 3pm. The lower floor has dim lighting, booths and soft seating, and attendees are mostly men.

An apprentice is told by her manager to laugh at clients' jokes, even offensive ones. She is seated with the firm's most valuable client. At the end of the night he tells her he has slipped his hotel key card into her handbag and suggests she join him for a nightcap.

The foreseeable risks

Attendees identified the risks quickly, which was the speakers' point: if a room of HR professionals can see them in five minutes, a tribunal will expect the employer to have seen them too.

- Compulsory attendance and an all-day free bar
- A bonus that rewards keeping clients happy and discourages complaining
- A manager's instruction to tolerate offensive jokes
- A young, junior apprentice placed with a powerful, much older client
- A venue designed for privacy: dim lighting, booths and soft seating
- A heavily male guest list

Could she bring a claim?

Before 30 October 2026, not a third-party harassment claim, although she might argue constructive dismissal on the basis of a breach of trust and confidence. After that date, the conduct looks like sexual harassment by a third party. The suggestion was plainly sexual, and on the facts it was likely unwanted. The employer would be in a weak position, because there is no sign it took steps to manage the risks it should have foreseen.

What reasonable steps might have looked like

- Setting and communicating behaviour standards to guests in advance
- Clear routes for staff to report concerns during the event
- Explicit permission for junior staff to walk away from a client without losing out financially
- Designated managers who stay sober and are ready to step in
- A buddy system so junior staff are never left alone with clients
- Using the brighter, open floor rather than the booths
- Limiting alcohol or ending the event at a set time

The bonus raised a difficult point. Where pay depends on commission, people let things slide to protect earnings. One option discussed was recognising, financially or otherwise, a staff member who reports harassment at the cost of a sale.

Handling the valuable client

The group agreed a manager should take the client aside and tell him plainly the behaviour is unacceptable. Most will back down. The harder question is what happens if he threatens to take his business elsewhere. The honest answer from the room was that an SME may struggle to lose a major account, even though that is the right response.

The speakers suggested a middle path for commercial relationships. Ending a contract over every incident is probably excessive, since no employer controls a third party's behaviour. But it may be reasonable to bar an individual from the site or from dealing with certain staff. Moving the employee away from the client instead carries its own risk: if it disadvantages her, it could become a discrimination or victimisation claim.



A Practical Action Plan

The risk assessment is where everything starts. The speakers recommended a cycle of four stages, repeated rather than completed once.

- **Assess the risk.** Identify roles with third-party contact and map who, what, when and where. Review past complaints, including informal ones, for patterns. Consider whether the risk is verbal, physical, visual or online, including responses to the company's own social media.
- **Consult.** Test the assessment with the people who face the risk, plus managers, unions and employee representatives. Frontline staff will know things head office does not, including measures that have already been tried and failed.
- **Act.** Turn the assessment into an action plan with named owners, deadlines and review dates. Remove or redesign risky interactions where possible, and mitigate where not. Keep measures proportionate: signs on every wall of a supermarket would not be.
- **Review.** Revisit after any complaint, organisational change, seasonal event, change in customer profile or sign that controls are not working.

Alongside the cycle:

- Update policies to cover third-party harassment explicitly
- Review supplier and client contracts for anti-harassment clauses, investigation protocols and termination rights
- Give managers scenario-based training, and tell them they can be personally liable
- Set up layered reporting routes: line manager, then senior manager, HR and director
- Make clear that victimising someone for raising a complaint is gross misconduct
- Add CCTV preservation to the investigation procedure
- Record everything: risk assessments, consultation notes, training content and attendance, decisions not to take a step and why

Larger organisations with several sites may want one high-level third-party assessment plus targeted assessments for each location. Several of the speakers' clients run separate assessments for the sexual harassment duty and the third-party duty, because the risks and requirements differ.

Before 30 October, the speakers suggested every employer be able to answer five questions. Who are our third parties? What are the risks? What do our staff tell us? What controls do we have? How do we know they work?

Questions From The Room

Can we deal with a complaint informally first? Sometimes, but not when the allegation is serious. An informal conversation may suit a minor issue the employee wants handled lightly. Where conduct is serious, or other people may be affected, the employer's preventative duty means it may have to investigate formally.

What if the complainant asks us not to take it further? Several attendees were dealing with exactly this, often where the alleged harasser is popular and the complainant fears being identified. The speakers' view was that the employer may have to proceed anyway, particularly if there are other complaints. If it does nothing and someone else is harassed later, it is likely to fail its duty. Support for the complainant can include changing shifts, a chaperone, extra training, and a clear message that victimising anyone who raises a concern will be treated as gross misconduct. Sexual harassment is now also capable of being a protected disclosure for whistleblowing purposes.

Can we anonymise witnesses? It is possible, but risky. The accused must have a fair chance to respond. If allegations are so anonymised that they cannot say where they were or who was involved, any disciplinary outcome may be unfair.

Do we need risk assessments for overseas locations? The duty protects people employed in Britain, but that includes UK-contracted staff who travel for work or deal with overseas colleagues and clients on video calls. Cultural norms vary, so an assessment for staff travelling to international events may need to consider each destination, who is attending and what they are asked to do. One attendee gave the example of female staff at overseas events being issued skirts rather than trousers.

Are volunteers protected? The speakers were not certain in the room and offered to check. As a general point, the courts have held that genuine unpaid volunteers with no contract are usually outside the Equality Act's employment protections. Harassment of an employee by a volunteer would, however, fall within the new third-party duty, and good practice applies to everyone on site regardless.

Does how we behave after a complaint affect compensation? Yes. Obstructing a claim or failing to apologise can lead to aggravated damages, typically in the low thousands but sometimes more. Losses also matter: helping a departing employee find comparable work, or pointing to suitable vacancies they did not apply for, can reduce the financial award.

About The One Group

The One Group is a recruitment and executive search firm covering accountancy and finance, HR and commercial office roles. This white paper is part of its events programme. The Discrimination Series is a three-part programme run in partnership with Howes Percival, giving HR professionals and business leaders a legal overview, practical guidance and real workplace scenarios on recruitment, workplace behaviour and neuroinclusion. It is a summary of the discussion and not legal advice. Employers should take advice on their own circumstances.

Sources

Commencement dates and scope of the new duties were checked against:

- CMS: Harassment law reform under the Employment Rights Act 2025
- Covington: UK Employment Rights Act 2025, October 2026 changes
- DLA Piper: New harassment measures extend protections for employees

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