

DRAPER LANG QUARTERLY

Have we forgotten how to behave?

POST COVID HAS SEEN A BOOM IN SEXUAL HARASSMENT COMPLAINTS. WITH CHANGES TO THE LAW AHEAD, WE EXAMINE WHAT EMPLOYERS CAN DO TO MAKE A POSITIVE CHANGE, AND TO LIMIT THEIR RISK

There has been a disturbing rise in sexual harassment, especially at work-related social functions. Many of these instances include extreme comments and some involve physical assaults. Post-pandemic, it seems people have forgotten how to behave, and it has to stop.

A new Government-backed law is proposed which will put a [statutory duty upon employers to prevent harassment of their employees](#), including sexual harassment.

If it becomes law, The Worker Protection (Amendment of Equality Act 2010) Bill [will also reinstate employer liability for harassment by third parties](#).

If, for example a client or customer harasses your employee, you can be held liable for it. [A one-off incident of harassment could be enough to face a claim](#).

The new duty on employers to take all reasonable steps to eliminate harassment in the workplace will be enforced by the Equality and Human Rights Commission (EHRC), which will write a new statutory code of practice. If employers fail to follow it, compensation against them may be increased by up to 25%.

WHAT SHOULD EMPLOYERS DO?

[Act now](#). The detail of the new laws or supporting Code is not yet known, but harassment occurs every day, and sexual harassment in particular seems to be increasing.

There are already protections for employees for harassment, but this new law will up the ante.

It is important that employers review their approach to harassment in the workplace. [Not as a one off tick box exercise, but as an ongoing agenda item](#) and embed this approach amongst employees through training and awareness. The current [EHRC Code](#) is a good place to start.



Welcome to the Draper Lang LLP Quarterly Update. Here we share some employment news highlights and look at what's coming up to help your business planning.

Practical steps are important

- Act swiftly and decisively to [send a clear message](#) that this won't be tolerated.
- [Make sure everyone knows](#) standards expected of them, and how to raise a complaint;
- Policies are important, but not enough. [Engaging](#) employees and [training on a rolling basis](#) are vital
- Managers should lead the charge, creating a culture of tolerance, challenging inappropriate behaviour and [stamping out microaggressions](#)
- [Risk management of third party liability will need careful thought](#). Required standards of behaviour must be clear, whether in notices or contractual arrangements. Again though this will not be enough, action will need to be taken to address complaints and support victims.

WE CAN HELP! WE REGULARLY ADVISE ON THESE ISSUES, DRAFT POLICIES AND TRAIN EMPLOYEES AND BUSINESS LEADERS [TALK TO OUR TEAM](#) IF YOU WOULD LIKE TO KNOW MORE.

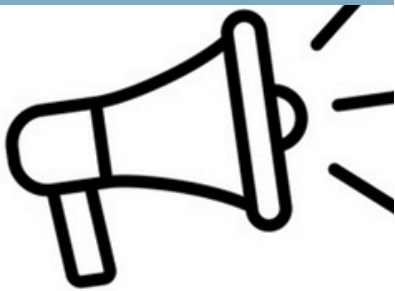
Flex working update

The Government have confirmed [changes which will be made to flexible working legislation](#) (when parliamentary time allows, no timescale set):

- employees will be able to request flexible working from day one;
- employers will have to consult if rejecting a request;
- two requests will be permitted every 12 months, rather than one;
- the response period for employers will reduce from three months to two, presumably including the appeal timeframe, as is now the case; and
- employees will no longer have to specify how the employer might deal with the effects of the request.

Tribunal cases and other news

- Appeals, be careful what you wish for! In a recent case an employee appealed against her dismissal and requested reinstatement. She was reinstated but changed her mind, she did not want to return. However by that time it was too late, the successful appeal meant that the [dismissal had 'vanished' and she therefore could not sue](#) for unfair dismissal.
- Employment Tribunal terminology - in case you missed it - Employment Judges are now to be [addressed as 'Judge'](#), not Sir/Madam, This is to simplify and modernise. Non-legal Tribunal panel members are still to be addressed as 'Sir/Madam'.
- Redundancy - reduction in compensation The Employment Appeal Tribunal decided that a Tribunal was wrong to reduce unfair dismissal compensation to zero on the basis that a redundancy pool of one meant dismissal was inevitable. [A good reminder that fair consultation is required](#) as consultation might have, for example, widened the 'at risk' pool, or found another way forward.



- The Government response to the 'Menopause and the Workplace' report was published on 24 January 2023. A 'Menopause Employment Champion' will be appointed to drive forward work on the issues of menopause in the workplace, [but the Equality Act 2010 will not be updated](#) to add menopause as a protected characteristic, and there will be no menopause leave pilot scheme.
- **Is marital status discrimination dead?** A recent case found that an employee had not been discriminated against because she was married to the employer's majority shareholder - [the outcome would have been the same if she was an unmarried woman with an equally close relationship](#) with him. Discrimination claims due to marital status are now rare indeed and, with this judgment, likely to become even more so.

COMING UP

Government consultations...

- **'Fire and rehire'** - consultation has been launched to consider the approach to this established mechanism of changing employment terms. The closing date is [18 April 2023](#). If enacted, a failure to follow the Code could result in a 25% increase in compensation for successful claims by employees.
- The very welcome consultation on **calculating holiday entitlement** for part-year and irregular hours workers closes on [9 March 2023](#).

Annual rates and limits increases:

From [1 April 2023](#) the National Living Wage (National Minimum Wage) will rise 9.7% to £10.42 per hour for those aged 23 or over.

From [10 April 2023](#) there is a 10.1% rise to:

- statutory sick pay, which rises to £109.40 per week; and
- statutory maternity, paternity, adoption, shared parental and parental bereavement pay which all rise to £172.48 per week.

Another bank holiday!! [Monday 8th May 2023](#) for the King's coronation. As for the extra royal bank holidays last year, entitlement is not automatic and will depend on the employee's contract of employment.

The Retained EU Legislation (Revocation and Reform) Bill is making its way through Parliament. This potentially explosive legislation can change much of what we in employment law and HR hold dear as norms, with over 4000 pieces of legislation now likely to be affected, including the Working Time Regulations and TUPE. The key deadline is [31 December 2023](#). Check our [Autumn update](#) for more details.

The Employment Bill, which was promised in 2019 but not delivered, seems to be creeping in piecemeal, mainly through Private Members Bills rather than one consolidated piece of legislation.

No timescales yet, but we'll keep you posted.

These changes will include greater protections from redundancy for those returning from maternity leave (for 6 months after they return), greater rights for carers and vulnerable workers and flexible working changes (above).

In union-related news, **Anti-strike legislation** aka legislation requiring 'minimum standards of service' by key sectors is proposed but likely to be challenged in the House of Lords, and permission for a judicial review of the law which allows agency to cover for striking staff has been granted. Watch this space!

We love to hear from you, so please [get in touch](#) if you would like to know more about anything featured in this update, or to give us any feedback.

