

UK Employment Rights Act 2025

UK Employment Rights Act 2025 – Harassment in the Workplace: The Compliance Challenge Just Got Bigger

Under the Employment Rights Act 2025 (the “**Act**”), UK employers will need to do more to prevent the harassment of their employees in the workplace and to encourage workers to speak up. This builds on a wider trend in recent years, particularly in relation to sexual harassment at work. These changes require employers to do more to proactively stamp out *all* forms of harassment in the workplace – and not just harassment caused by their employees.

In this client alert, we focus on four key aspects of this regime:

-  the newly enhanced duty on employers to take *all* reasonable steps to prevent sexual harassment in the workplace;
-  the introduction of direct employer liability for *third-party* harassment;
-  the strengthening of whistleblowing protections relating to sexual harassment-related disclosures; and
-  the banning of contractual clauses that attempt to restrict a worker from making disclosures about sexual harassment (also referred to as gagging clauses, confidentiality clauses, or non-disclosure agreements, “**NDAs**”).

We conclude with a practical [checklist](#) for employers to consider in the lead up to these changes.

The Ever-Expanding Preventative Duty: *All* Reasonable Steps

In October 2024, the Government introduced a proactive duty on UK employers to take reasonable steps to prevent the sexual harassment of their employees and workers in the course of their employment. From 30 October 2026, employers will be under a duty to take *all* reasonable steps to prevent this, mirroring the “all reasonable steps” defence in UK equality legislation. The change is significant. Taking *all* reasonable steps is a very high bar and means that employers can no

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longer use the defence of implementing some, but not all, of the reasonable steps available to them. It also makes it undeniable that it is not enough to simply be reactive to incidents of sexual harassment; employers must be seen to be proactive in their approach to tackling this.

Many employers will be asking themselves: what constitutes *all* reasonable steps? The Act does not itself state which steps will be regarded as “reasonable”, but it does give the Government powers to set out what amounts to reasonable steps in regulations. The reasonableness of a step for a particular employer will ultimately depend on the size, sector, and kind of work that an organisation does. Existing technical [guidance](#) published by the Equality and Human Rights Commission may act as a guide for what steps are likely to be considered reasonable in the meantime (although this guidance is also in the process of being updated in light of the new duty). We list some ideas that employers may wish to consider in the checklist at the end of this alert.

Third-Party Harassment

From 30 October 2026, employers will also be directly liable for the harassment of their employees by third parties (in the course of their employment), unless the employer has taken all reasonable steps to prevent this from happening. This covers all kinds of harassment (not just sexual harassment) by a broad range of individuals, including contractors, guests, customers, clients, and members of the public. This will be challenging for employers as the risk will often be particularly acute in situations or environments over which they are unable to exercise significant control (for example, offsite Christmas parties or

contractor site visits).

There is some limited comfort from the [Government](#) that:

- ▶ trivial third-party conduct will not trigger this liability (effectively creating a de minimis threshold);
- ▶ when determining what is offensive, it will not be enough to rely on an employee's subjective perception that someone's conduct is offensive; that perception must also be reasonable (adding an objective limb to the test);
- ▶ employers will not be penalised for failing to take unworkable or impractical steps, and are not expected to “stop all harassment from ever occurring to their employees” or to “intervene directly in all incidents”, as that “would be impossible”;
- ▶ the steps an employer can reasonably take in respect of third parties are “clearly more limited” than in respect of their own employees; and
- ▶ freedom of expression must be balanced against any proposed step (which will be a difficult judgement call that employers will ultimately have to make).

It is not clear whether the Government will provide examples of such reasonable steps in regulations as they are doing in relation to the sexual harassment duty described above. However, we include some ideas that employers may wish to consider in preparation for this change in the checklist at the end of this alert.



Whistleblowing Protections - Sexual Harassment

Since 6 April 2026, a disclosure relating to sexual harassment has explicitly constituted a “qualifying disclosure”, removing any doubt that this amounts to whistleblowing (provided that there is a reasonable belief that it is being made in the public interest, amongst other things). Previously, such disclosures would often need to be framed as a “criminal offence” or a “legal breach” to qualify for protection, so this appears to be a clear signal from the Government regarding the importance of protecting potential victims of sexual harassment when they speak up.

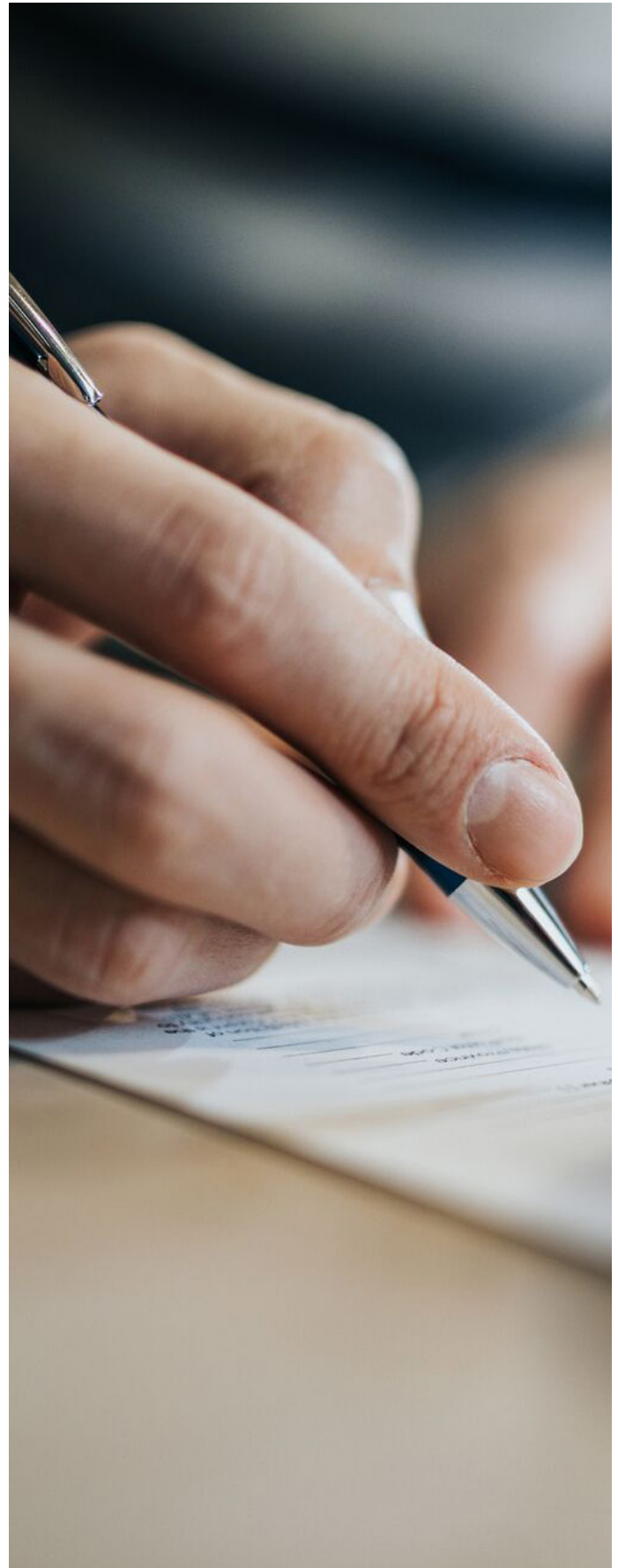
NDA's Weakened

At some point in 2027, contractual provisions that seek to prevent workers from making allegations or disclosures relating to certain forms of work-related discrimination or harassment will be void. There will be a narrow category of “excepted agreements” to which this ban will not apply; further regulations will clarify what this is likely to include but, currently, it seems like this will cover NDAs, provided that the worker receives independent written legal advice on its terms and effects, gives informed written consent to it, and has a 14-day cooling off period within which a worker can withdraw from the agreement without penalty.

The Government's [consultation](#) on this change closed on 8 July 2026 and it has not yet published the outcome. Amongst other things, it consulted on:

- ▶ whether a worker should be allowed to waive or shorten any cooling off period (e.g., where they want a clean break);
- ▶ whether an excepted agreement should only be permitted in relation to past (alleged) incidents of harassment or discrimination, rather than future ones;
- ▶ whether an excepted agreement should be time-limited (for example, assigning a fixed-term period of no longer than 3 years, after which any confidentiality obligations in the excepted agreement that would prevent disclosures about harassment or discrimination lapse); and
- ▶ people that those who have signed an excepted agreement should still be able to speak to, like qualified lawyers, victim support groups, or potentially even prospective employers in certain circumstances.

Given the significance of these reforms, employers should continue to monitor developments in the implementing legislation and regulations. If you have any questions about the Act, harassment or whistleblowing law, or any other employment matters, we are happy to assist.



What Can Employers Do? A Checklist for Compliance



Start preparing for the enhanced duty to prevent sexual harassment in the workplace now.

- ☐ Review and update existing policies.
- ☐ Consider if having a standalone sexual harassment policy may be helpful.
- ☐ Carry out proactive risk assessments and consider factors that might increase the likelihood of sexual harassment, along with possible mitigation steps.
- ☐ Assess the effectiveness of any existing reporting system and ensure that workers have more than one way of reporting sexual harassment.
- ☐ Ensure that you are offering routine refreshers of sexual harassment training to workers, monitoring it for effectiveness, and documenting compliance.
- ☐ Regularly evaluate the effectiveness of the steps put in place to prevent sexual harassment in the workplace, using quantitative and qualitative data where appropriate.
- ☐ Ensure that you are being proactive, not just reactive.
- ☐ Document all of the above.



Start preparing for direct third-party harassment liability now.

- ☐ Ensure that you have already fostered a zero-tolerance culture for all kinds of harassment and discrimination. Senior leadership may wish to set the tone for this.
- ☐ Review and update existing policies to expressly deal with the potential for third-party harassment.
- ☐ Carry out proactive risk assessments and consider factors that might increase the likelihood of sexual harassment, along with possible mitigation steps.
- ☐ Provide tailored staff training on identifying and reporting third-party harassment (generic anti-harassment training that does not address the third-party context is unlikely to be sufficient).
- ☐ Assess the effectiveness of any existing reporting system.
- ☐ Consider including terms in commercial contracts with third parties, expressly dealing with harassment by the counterparty's employees or agents.
- ☐ Consider putting up anti-harassment signs and posters.
- ☐ Document all of the above.



Update whistleblowing policies to reflect the fact that sexual harassment is now explicitly a “qualifying disclosure” (where necessary).



At some point in 2027, review confidentiality clause language in NDAs and settlement agreements, in light of the new ban on provisions seeking to prevent workers from making allegations or disclosures relating to certain forms of work-related discrimination or harassment (noting that in some circumstances, these may constitute excepted agreements).