

Changes to sexual harassment law schools need to know

With new law coming in to strengthen worker protection against sexual harassment, an education lawyer outlines what schools and trusts should be doing to prepare

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Emma Thompson



Earlier this month a male teaching assistant won a case for sexual harassment against a school, where he became the subject of staffroom “banter”, with colleagues laughing at inappropriate comments made by the female headteacher about his “fit body and Speedos”.

In this case, the tribunal heard how other colleagues teased the teaching assistant about the innuendos and comments made by the headteacher.

This case is a timely reminder that there is no place for teasing or risqué behaviour in schools, particularly given the changes in the approach to sexual harassment in the workplace coming into force this October from the Worker Protection (Amendment of Equality Act 2010) Act 2023.

New law against sexual harassment

This new law will place increased responsibility on employers, such as schools, multi-academy trusts and school leaders, to take “reasonable steps” to prevent sexual harassment.

The parliamentary bill, in its original form, was expected to strengthen protection for employees even more by requiring employers to take “*all* reasonable steps” to prevent harassment, including harassment from third parties, such as parents and governors.

Third-party harassment was not, however, included in the final legislation. This leaves employees harassed by third parties at work with no, or very limited, legal redress.

Furthermore, the final legislation removed the word “all” from the new duty, so employees must take “reasonable steps” to prevent sexual harassment.

While some have said this is a dilution of the original proposals, the new duty on employers is still significant and employers are warned against ignoring the issue of sexual harassment, including from third parties.

If an employee succeeds with a claim for sexual harassment and compensation is awarded, the employment tribunal will assess whether the employer complied with the new duty to prevent the sexual harassment that occurred.

If the employment tribunal finds that there was a failure to comply, a school may be ordered to pay additional compensation of up to 25 per cent of the original award.

Conversely, a school that can demonstrate that it has taken reasonable steps to avoid sexual harassment occurring in the workplace will be able to reduce the risk of an uplift to compensation occurring.

Currently it remains unclear what might constitute reasonable steps that a school should take to prevent sexual harassment, with the phrase “reasonable steps” not being defined in the 2023 Act.

Make policy plans now

While we await the Equality and Human Rights Commission (EHRC) statutory code, school leaders should prepare for this new duty by creating anti-harassment policies and procedures or updating these if they are already in place.

Policies should also be communicated clearly to all staff, effectively implemented and reviewed regularly. And steps should be taken to ensure that all staff know how to raise a complaint of sexual harassment and understand the steps taken to investigate these concerns impartially and safely.

Support should be extended to all individuals involved in a sexual harassment complaint because this is likely to be a stressful time for all involved.

Finally, periodic training should be given to all staff, with additional training being made available to those responsible for investigating such complaints.

Ultimately, schools should ensure that the prevention of sexual harassment remains a priority, with this new duty expected to be the start of reforms rather than the conclusion.

Emma Thompson is a partner and head of employment at Kent and London law firm Thackray Williams