

Issue: Sexual harassment

Three migrant workers who were working as waitresses brought claims of sexual harassment and constructive dismissal against their employer. They claimed that during their period of employment (between 1 and 5 years) they had been subjected to talk of a sexual nature from the restaurant owner and made to wear short skirts. They accepted that they had sometimes initiated talk of a sexual nature, but used this as a coping strategy. A female assistant manager had acted as a 'buffer' between the claimants and the restaurant owner, but when she left, they all found their situation untenable and resigned. Things came to a head when the restaurant owner shouted at one of the waitresses in front of her other two colleagues.

Employment Tribunal – Verdict

An employment tribunal and the Employment Appeal Tribunal upheld the sexual harassment and constructive dismissal claims. Even though the claimants did initiate conversations about sex, this was a defensive move to divert the restaurant owner's attention away from them. The EAT also concluded that it was not surprising that the claimants put up with the sexual harassment for as long as they did, given that they were migrant workers and were constrained by financial pressures. Putting up with a situation did not mean they welcomed it.

- ⌘ Employers should remember that an employee may appear to be joining in because they are intimidated and whilst appearing to laugh they may be really offended and humiliated.
- ⌘ Employers can only defend themselves if they can show they had taken reasonably practicable steps to prevent the other employees from behaving inappropriately.
- ⌘ Ensure all employees are well aware of the standards of behaviour expected of them and keep clear records of training attended and policy's read and understood, ideally signed.
- ⌘ Regular communications and training for all employees should be undertaken, reminding them of the employer's policies on equality and diversity and the consequences of breaching them.

Learnings for employers

- ⌘ To help prevent such situations arising employers must have clear equal opportunities and anti- harassment and bullying policies and communicate these to staff.
- ⌘ When complaints arise, they should be sensitively and promptly investigated and acted upon.
- ⌘ Employers who ignore workplace 'banter' are taking a considerable risk.
- ⌘ Even if employees appear to be willingly engaging in banter, employers should remind all employees that such behaviour is not acceptable.

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Sources

CIPD: <https://www.cipd.co.uk/knowledge/fundamentals/emp-law/harassment/cases>

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