

PROTECTING YOUR EMPLOYEES FROM HARASSMENT

11 July 2024



MEET THE PRESENTERS AND TECHNICAL SUPPORT



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USING GOTO WEBINAR



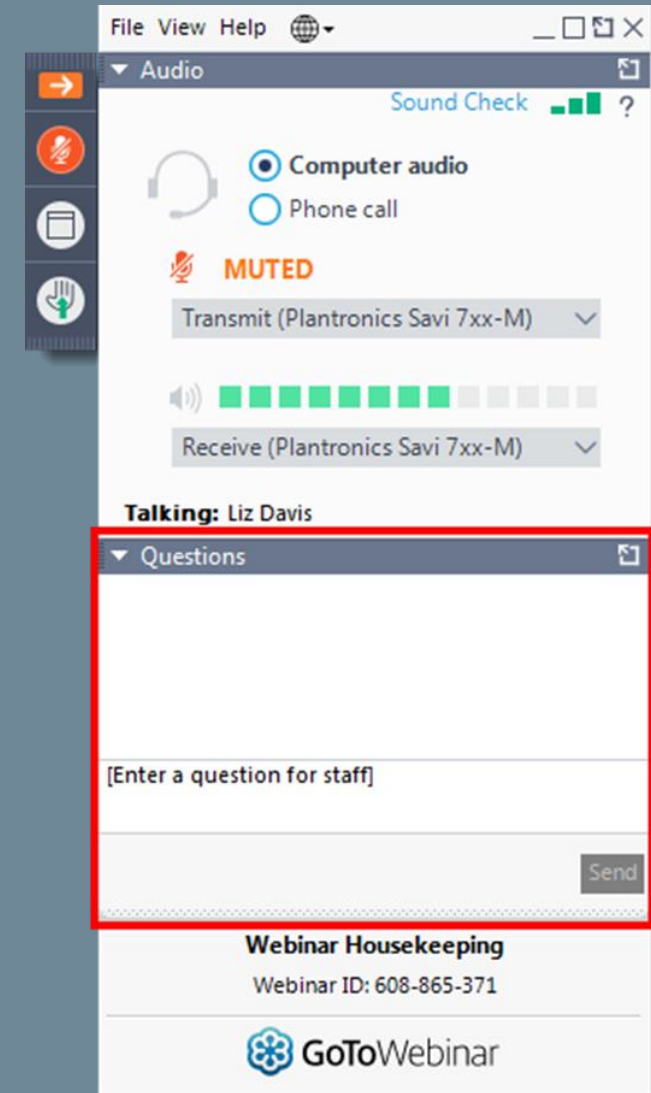
QUESTIONS...



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POLL INCOMING...

WHAT DO YOU
THINK?

AGENDA



Current harassment laws



The new Workers Protection (Amendment of Equality Act 2010) Act 2023



What do the new duties mean for employers?



Q&A



POLL INCOMING...

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CURRENT HARASSMENT LAWS

AGENDA



Statutory duties central to the employment contract



The Equality Act 2010



The Health and Safety at Work Act 1974



The Workplace (Health, Safety and Welfare) Regulations 1992



The Protection from Harassment Act 1997

STATUTORY DUTIES

- Fundamental to the employment relationship is an employer's duty to gain the employee's trust and confidence:
 - “Employers must not without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between employer and employee” (*Malik and another v Bank of Credit & Commerce International SA*)
- Duty of care
 - Employers must take reasonable care to protect their employees from foreseeable harm
- Duty of fidelity
 - The duty to act in good faith



THE EQUALITY ACT 2010

- Age
- Disability
- Gender reassignment
- Marriage or civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation
- Northern Ireland: Political belief

**Protection from
harassment**



THE EQUALITY ACT 2010

Harassment

Unwanted behaviour, intentional or not, that has the purpose of violating dignity, or creates an intimidating or hostile, degrading, humiliating or offensive environment

The Equality Act 2010

LEGAL DEFINITION OF HARASSMENT

The legal definition of harassment under the Equality Act 2010

Person A harasses another (B) if—

- *'A' engages in unwanted conduct related to a relevant protected characteristic, **and***
- *the conduct has the purpose or effect of violating 'B's' dignity, **or** creating an intimidating, hostile, degrading, humiliating or offensive environment for 'B'.*

Person A also harasses (B) if—

- *'A' engages in unwanted conduct of a sexual nature, **and***
- *the conduct has the purpose or effect of violating 'B's' dignity, **or** creating an intimidating, hostile, degrading, humiliating or offensive environment for 'B'.*

Person A also harasses (B) if—

- *'A' or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex, **and***
- *the conduct has the purpose or effect of violating 'B's' dignity, **or** creating an intimidating, hostile, degrading, humiliating or offensive environment for 'B'.*

EXAMPLES (NOT LIMITED TO)

- Unwanted physical conduct
- Unwanted verbal conduct
- Unwanted non-verbal conduct
- Bullying
- Virtual bullying
- Conduct of a sexual nature
- Coercion
- Isolation or non-co-operation at work



WHAT IS HARASSMENT?



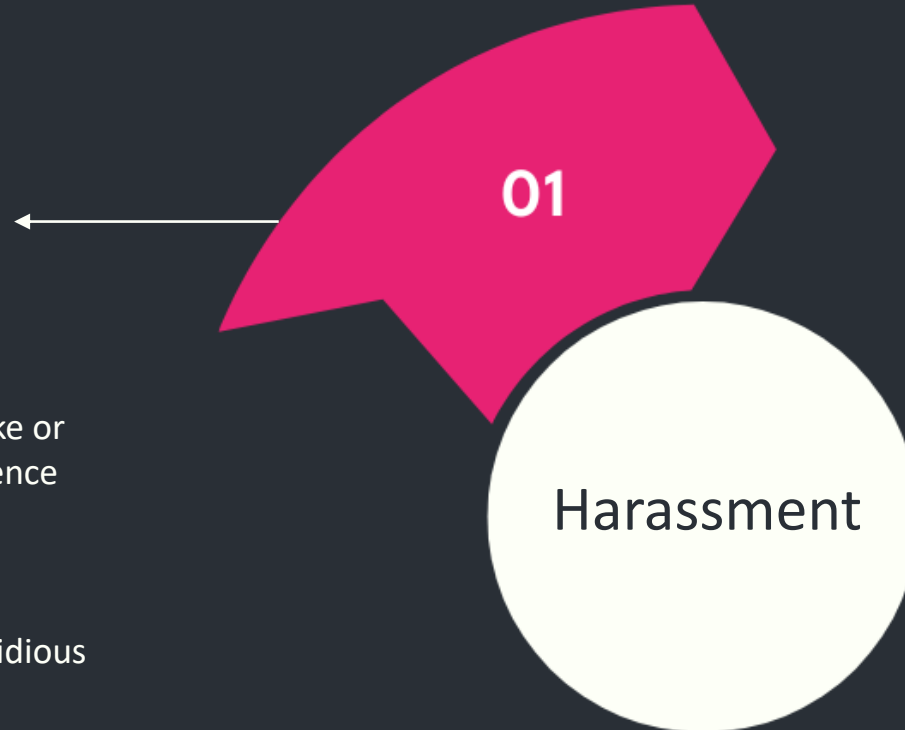
What is harassment under the Equality Act 2010?

WHAT IS HARASSMENT?

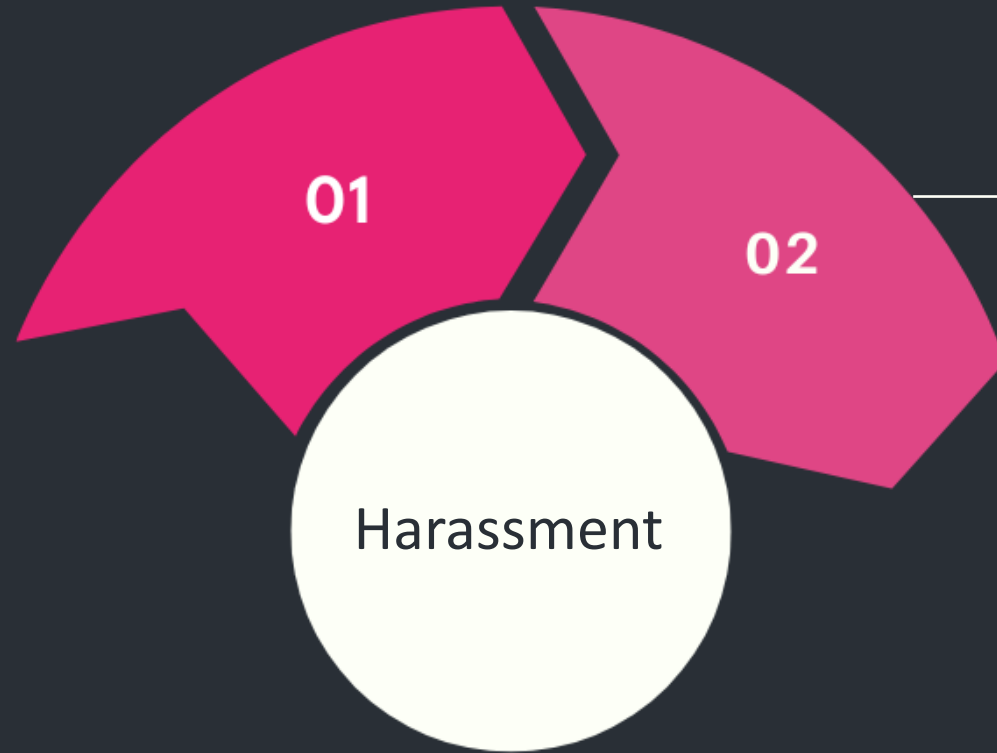
01.

It can be:

- Ongoing or a one-off act
- Can take many forms from a joke or 'banter', to actual physical violence
- Intentional, obvious or violent
- Unintentional or subtle and insidious
- Nicknames, gossip, intrusive or inappropriate questions/comments
- Coercion such as threats of dismissal or loss of promotion, isolation, deliberate exclusion from communications or groups.



WHAT IS HARASSMENT?

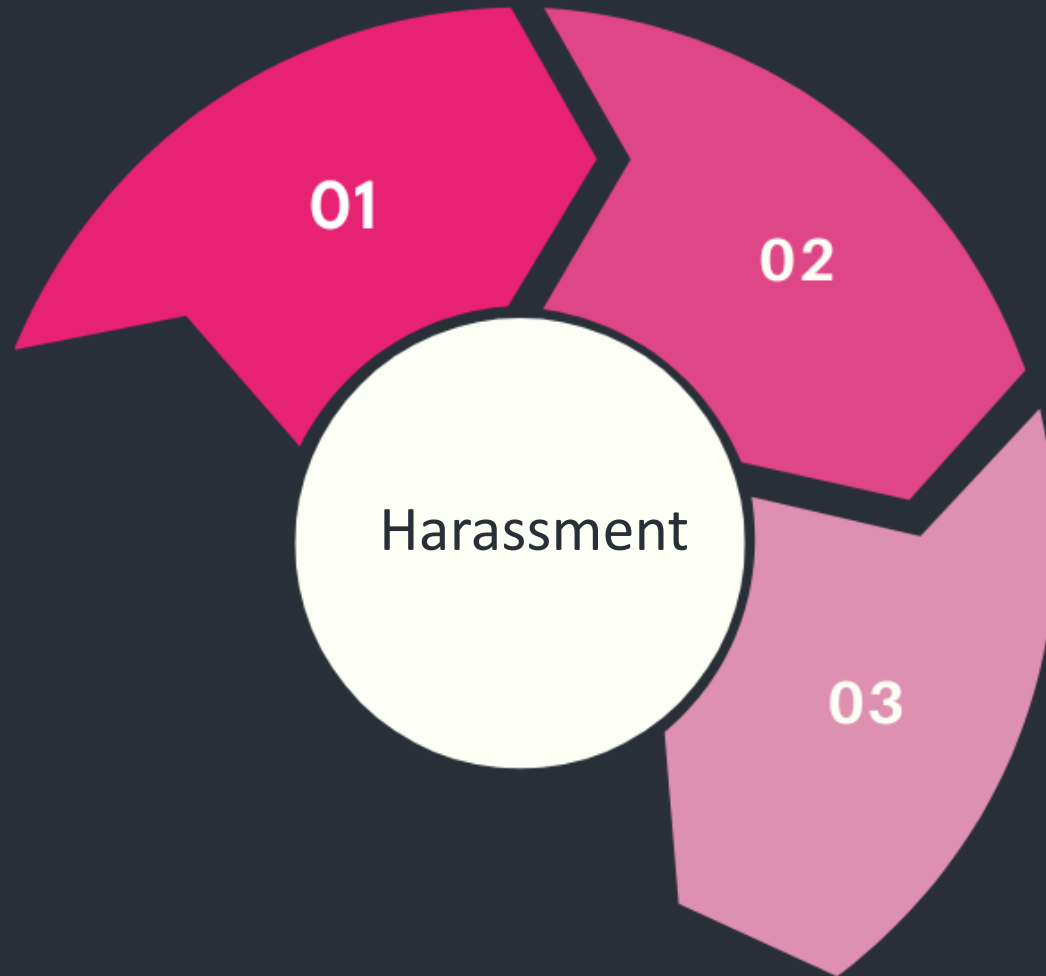


02.

Under the Equality Act

- It does not matter whether the alleged harasser possesses the same protected characteristic of the alleged victim
- The perception of the individual who was allegedly harassed is usually more important than the intention of the alleged harasser
- The complainant need not necessarily be the person towards the harassment is directed
- Someone who witnesses harassment towards another person is entitled to bring a legal claim, even if they do not share the protected characteristic.

WHAT IS HARASSMENT?



03.

Harassment will *not* have taken place if:

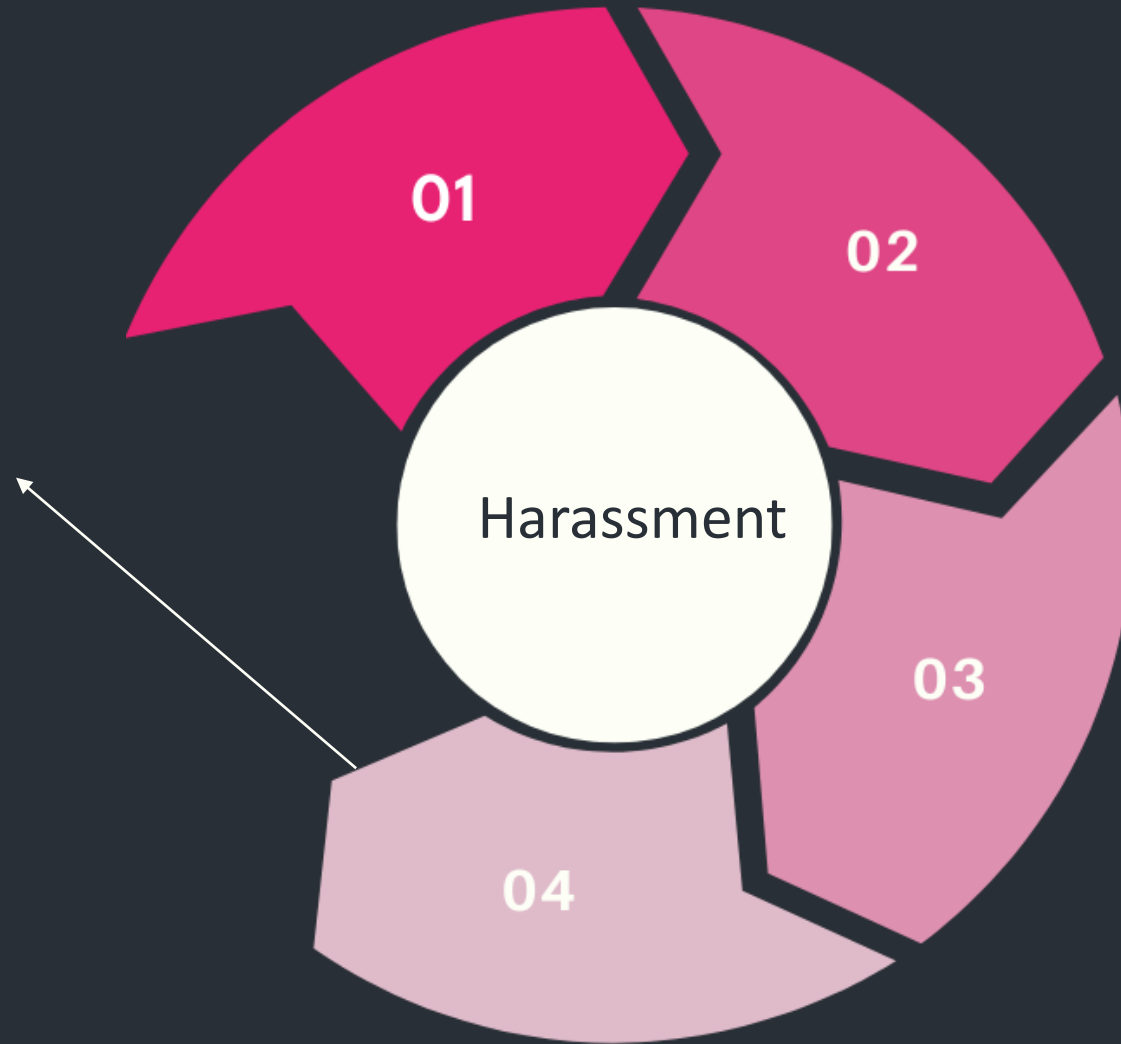
- The effect on the alleged victim is wholly unreasonable in the circumstances of the case
- Each case will have its own set of circumstances meaning what is 'reasonable' is difficult to define

WHAT IS HARASSMENT?

04.

**Tribunal
recourse:**

- Discrimination
- Unfair dismissal
- Breach of contract
- Constructive dismissal

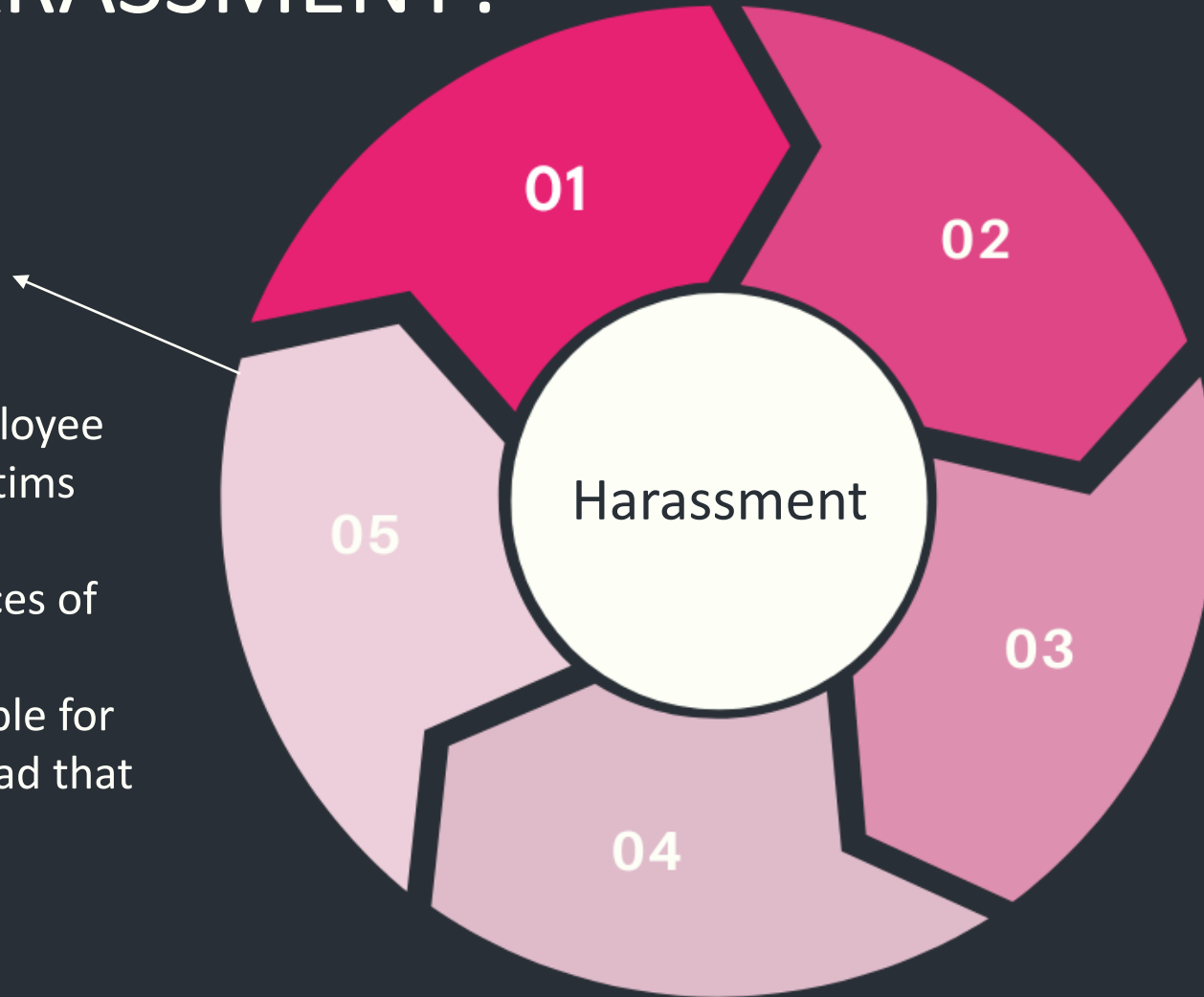


WHAT IS HARASSMENT?

05.

An Employment Tribunal are concerned with:

- The effect on the employee by considering the victims perception
- The other circumstances of the case
- Whether it is reasonable for the conduct to have had that effect



OTHER LEGISLATION

- The Health and Safety at Work Act 1974
 - Section 2: Employer must, where reasonably practicable ensure the health, safety and welfare of its employees.
- The Workplace (Health, Safety and Welfare) Regulations 1992
 - Place an overriding duty on employers to make workplaces suitable for those working in them
 - As part of the duty, an employer must assess the health and safety risks and the risks to the health and safety of others
- The Protection from Harassment Act 1997
 - This Act was not designed to deal with harassment occurring in employment, but could apply in certain circumstances
 - Harassment under this Act can be a criminal offence with individuals being liable
 - Harassment in this Act is behaviour that causes alarm or distress (such as stalking) and not necessarily related to a protected characteristic.





THE WORKER PROTECTION (AMENDMENT OF EQUALITY ACT 2010) ACT 2023

PURPOSE AND SCOPE

- In force from 26 October 2024
- Places a new legal duty on employers to take reasonable steps to prevent the sexual harassment of workers during the course of their employment
- The legal duty only extends to sexual harassment and does not extend to harassment based on other protected characteristics.



3RD PARTY HARASSMENT

- There is no specific legal duty in the Act, to protect workers from 3rd party harassment....however.....
- The Equality and Human Rights Commission (ECHR) in their latest draft guide which is currently the subject of a public consultation states:
 - *the preventative duty includes prevention of sexual harassment by third parties. Therefore, if an employer does not take reasonable steps to prevent sexual harassment of their workers by third parties, the preventative duty will be breached".*
- We would therefore advise developing your policies to ensure 3rd party harassment is addressed.
- An Employment Tribunal will consider a client's overall approach to preventing and dealing with sexual harassment when considering if a client has taken reasonable steps. There may be some circumstances therefore that by including protections from 3rd party harassment may count towards a client demonstrating they have taken reasonable steps.





WHAT WILL THE NEW DUTIES MEAN FOR EMPLOYERS?



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WHEN THERE IS A BREACH OF THE NEW DUTY

- A breach of this new duty will only follow where a Tribunal have upheld a claim for sexual harassment
- When a claim of sexual harassment has been upheld the Tribunal can make an uplift of up to 25% in compensation
- New powers will be given to the Equality and Human Rights Commission (ECHR) to enforce the new duty.
- **Remember! The duty is to take *reasonable* steps to prevent the sexual harassment of workers, during the course of their employment**



WHAT REASONABLENESS MAY LOOK LIKE

Prompt dealing of complaints

Proper and thorough investigations

Taking appropriate action

Creating an anti-harassment policy that is monitored and reviewed regularly

Clear statement that sexual harassment will not be tolerated and is unlawful and may lead to disciplinary action up to and including dismissal

Stating that aggravating factors such as abuse of power over a more junior colleague will be considered when deciding on disciplinary action

Defining sexual harassment and providing clear examples that are relevant to the working environment that reflect the diverse range of people that harassment may affect

Establishing effective procedures for receiving and responding to complaints

Appropriate training

Addressing third party harassment:

- it will not be tolerated
- encourage employees to report it
- set out the steps taken to prevent it
- set out the steps that will be taken to remedy a complaint or to prevent from re-occurring



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Thank you

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