Sexual harassment and harassment at work: technical guidance

Submission to the Equality and Human Rights Commission

Chartered Institute of Personnel and Development (CIPD)
July 2026

About CIPD

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years.

It has 160,000 members across all sectors and sizes of organisation and provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers. It also seeks to promote and improve best practice in people management and development and to represent the interests of our members.

Our response

Summary of Key Comments

- The Guidance would benefit from restructuring to help flow, clarity, and ease with navigability. Each section should lead with practical steps and then illustrated by case studies and examples, not the reverse.
- EHRC should consider user testing the Guidance before publication, ideally through online roundtables with employers across sectors, sizes and levels of HR support.
- Risk assessment needs a dedicated methodology and a downloadable template. Smaller employers, who make up the overwhelming majority of UK businesses, need a plain language companion resource rather than being left to work through the full technical document without support.
- The statutory references in the consultation materials should be checked against the Act.

Question 1. Have you read the sexual harassment and harassment at work technical guidance update?

Yes.

Question 2. What is the name of the organisation that you are responding on behalf of? Please submit one response per organisation.

CIPD

Question 3. Does the guidance update explain the new laws clearly?

Not consistently, it is not always clear what has changed compared with the current position, or how the new provisions relate to the sections they sit alongside. The section “What this guidance covers” should be updated and or expanded to explain what the technical guidance now includes in terms of legislation and legal obligations created by those pieces of legislation.

The related section ‘What the Act says about harassment’ should also be expanded to include reference to third party harassment; it might also be necessary to change ‘Act’ to ‘law’ - as the whistleblowing protections are contained in the Employment Rights Act 1996, and not the Equality Act 2010.

Employers and advisors would find it helpful if the changes and differences from the current position could be highlighted so that they are easily distinguishable. For example, through a clearly marked 'what has changed' box or shaded text at the start of each amended section, consistently applied throughout. At present the reader has no quick way to tell which parts are new.

The draft appears, in places, to conflate two distinct duties. The long-standing anticipatory duty to take reasonable steps (now "all" reasonable steps) to prevent sexual harassment specifically sits at section 40A Equality Act 2010, as amended by ERA 2025 section 19, and already encompassed third party sexual harassment risk. The new standalone duty at section 40(1A), inserted by section 20, is broader: it covers all protected characteristics, not sexual harassment alone. These two duties have different scope and different legal mechanisms, one anticipatory and enforcement based, the other a standalone basis for a harassment claim, and we recommend the Guidance draw the distinction explicitly and early, ideally in "What this guidance covers." Section 2 below sets out where this conflation currently occurs (paragraphs 2.11 and 2.19).

We would also ask EHRC to clarify workforce scope at this point in the document. Neither duty is clear, on the face of the Act, as to how far "employees of A" extends to agency and casual workers, apprentices, interns, volunteers or the self-employed. This matters to a large proportion of CIPD's membership in retail, hospitality and the charity sector, and leaving readers to apply the general section 83 Equality Act 2010 definition unaided is not a satisfactory substitute for a direct answer.

Question 4. What aspects of the new laws are still unclear, and why?

Several points are unclear.

The practical difference between "reasonable steps" and "all reasonable steps" should be set out much more clearly. The new formulation mirrors the existing employer defence at section 109(4) Equality Act 2010, and case law under that defense, for example Allay (UK) Ltd v Gehlen [2021] UKEAT/0031/20, establishes that stale or unrefreshed training will not discharge it. Tribunals will ask whether any further step could reasonably have been taken, not merely whether the employer did something. We think this needs to be stated plainly rather than left for employers to infer, and we return to it at Section 2 below.

The timing and content of the "reasonable steps" regulations under the new section 40B remains open. No regulations have yet been developed, and a further consultation is expected first, currently anticipated for 2027. Employers should be told clearly that this Guidance may be superseded in material respects once those regulations land, so they are not caught unaware by a second significant update shortly after this one.

Question 5. Does the guidance update clearly explain what employers should do to comply with the new laws?

Yes, partly and could be strengthened as much by structure as content.

Flow and navigability. Employers using this document in practice, often under time pressure and without HR or legal support, need each section to lead with the practical steps and follow with the case study that illustrates them. At present the ordering varies, and readers have to search around the examples for the operative guidance. EHRC's existing "Preventing sexual harassment at work: checklist and action plan for employers" is only flagged near the end of the draft, despite being a directly actionable companion resource; it should be signposted from the introduction. We understand that checklist is itself under review to reflect the ERA 2025 changes and is currently oriented around hospitality, so the two documents should be updated together to keep their language and their treatment of "reasonable steps" consistent, including for the sector neutral third party provisions.

Risk assessments. The guidance references risk assessment (see our comments in paragraphs 2.13/2.14 and 3.10 below) without setting out a methodology. We recommend a short standalone section covering:

- Setting out ‘how to’ - identify risk factors, assess likelihood/severity, identify controls, implement, monitor and review.
- A downloadable risk assessment template/tool, in the same spirit as the existing hospitality checklist, but structured to be adaptable across sectors (a customer-facing retail

environment, a professional services firm with client entertaining, a manufacturing site with lone or night-shift working, and a remote/hybrid organisation with digital-only third-party contact will each need to weigh different factors).

- Explicit guidance that risk assessment is not a one-off compliance exercise: it should be reviewed periodically, after any relevant incident, and whenever working practices, premises or the customer/client base change materially.
- Confirmation of what evidence of a risk assessment (and of decisions taken, including reasoned decisions not to take a particular step) an employer should keep, given this will be directly relevant to demonstrating the 'all reasonable steps' defence.

Guidance for small and medium-sized employers. SMEs make up the vast majority of UK businesses, most without dedicated in-house HR support. An evaluation of own SME HR support pilots found that people management capability in most small firms is limited, with many struggling to comply with existing employment regulation, let alone a newly strengthened duty.

The pilots found that it was not unusual for micro and small firms to have no written employment contracts or formal and consistent processes for recruiting staff or managing conflict or absence. The level of awareness of employment law among SMEs and particularly in micro and small firms is typically poor due to owner managers being time and resource poor and lacking of knowledge of HR/people management issues.

We recommend EHRC produce a short plain language companion resource for smaller employers, modelled on the hospitality checklist but generalised across sectors, prioritising a small number of low-cost actions an owner manager or single HR generalist could realistically implement without legal advice, with clear signposting to free or low cost further support. There is a precedent for this approach. EHRC's own hospitality-sector preventing sexual harassment at work: checklist and action plan for employers | EHRC already demonstrates a shorter, practical format sitting alongside the full technical guidance. Acas' guidance on preventing sexual harassment is a further example of a plain-English, sector-neutral resource already published alongside more detailed legal material. We are not aware of a published, sector-neutral small business version of the EHRC Guidance itself.

Question 6. Which parts of the guidance update on employer actions are unclear, and how could this be improved?

Please see our responses to other questions.

Question 7. Are the new examples helpful?

Yes – but please see our specific comments below on some of the examples. Example E and Example I in particular are illustrative and comprehensive. Our detailed comments on specific examples are set out in the paragraph-by-paragraph feedback below. As noted under Question 4, some of the points about ordering and structure originally drafted under this question have been moved there, as they are really about the navigability of the document as a whole rather than the content of individual examples.

Question 8. Is there any further support you think employers would find helpful in complying with the new laws?

Yes.

Structured user testing before publication, for example online roundtables or moderated focus groups with employers across sectors, sizes and levels of HR maturity, would identify in advance where the document is unclear or assumes a level of legal literacy many readers will not have. Given the scale of this change and the fact that further "reasonable steps" regulations are not expected before 2027 (see Question 4), this Guidance will be the primary practical reference point for employers for some time, which makes testing it properly before release more important than usual.

We would also ask EHRC to be clearer about its own enforcement capacity. EHRC has previously told Parliament, in evidence given during the passage of the ERA, that it had not been granted additional funding to enforce the strengthened duty. If the Guidance is to be more than an aspirational statement of the law, employers and workers alike will want some visibility of how enforcement will actually be resourced and prioritised in practice. We recommend this be addressed either in the Guidance itself or in EHRC's accompanying communications, and that the point be checked against the most recent parliamentary record before this response is finalised.

Question 9. What further support would be helpful?

We think it might be helpful for the EHRC to run focus groups with employers and employees from a range of sectors and sizes to test out how helpful this guidance is and where there might be any areas of confusion and gaps that can be addressed.

Beyond the risk assessment template and SME guide already set out at Question 5, we recommend a one page "what has changed" summary at the front of the Guidance, distinguishing the amended preventative duty, the new third party duty and the new whistleblowing protection so time-poor readers can see quickly which parts apply to them. We also recommend a public commitment to review and reissue the Guidance once the section 40B regulations and the pending reforms to confidentiality agreements (see Section 6 below) are finalised, so employers are not caught unprepared by a further update shortly after this one.

Two content gaps would also benefit from further support. The first is a dedicated case study on AI generated images and deepfakes, an area of growing concern that is not yet well understood in practice (see Section 1 below). The second is guidance on trauma informed investigation practice, extending beyond how to weigh evidence to cover welfare support during a live investigation, such as referral to occupational health, the right to be accompanied, and interim adjustments to reporting lines or shift patterns for the complainant and, where appropriate, the respondent.

Specific comments:

Section 1 – Meaning of 'Purpose' or 'Effect'

Where it states … "if the harasser's purpose is to violate the…". The word 'purpose' in this sentence implies premeditation or intention. There will be occasions where someone does not intend to harass as in example A. Richmond Pharmacology v Dhaliwal [2009] establishing that harassment does not require the harasser to have the intended effect.

In example A, the wording in sentence three: "She is aware of the images are being downloaded and the effect of this is to create a hostile and humiliating environment for her." again presumes intention through the words 'is to create". We suggest amending to : "She is aware of the images are being downloaded and the effect of this is to create or leads to creating a hostile and humiliating environment for her."

Also in Example A, it would be helpful to explain that behaviour amounting to sexual harassment does not need to be directed at a specific individual, as the example could be interpreted as the behaviour affecting one specific individual. The 'hostile and humiliating environment can arise from actions such as sexualised jokes and/or pornographic images that create an offensive working atmosphere in the workplace. It could also be helpful to point out that sexual harassment could still have occurred even if others (eg other women in this example) do not find the behaviour offensive and regard it as 'banter'.

Para 1.4 - might it be helpful to add to offensive here – intimidating, hostile, degrading or humiliating?

Para 1.5

Is it contradictory to include the following as a bullet point to be considered: “Whether the conduct was intended to cause offence, as conduct that is obviously intended to cause offence is much more likely to have the effect described in paragraph 1.2”? The point of 1.2. is to consider the worker’s perception and not the harasser’s intention.

Para 1.6 and 1.7.

The inclusion of both subjective and objective elements within the statutory test for harassment under section 26 of the Equality Act 2010 remains helpful. However, paragraphs 1.6 and 1.7 would benefit from greater clarity on how the objective test should be applied in practice. As currently drafted, they risk implying the assessment is based on an abstract “reasonable person” rather than requiring consideration of ‘all the circumstances of the case’, including the workplace context, power dynamics, cumulative conduct, and matters known, or which might reasonably to have been known, by the employer or respondent.

The Code should make clear that the objective assessment is context-specific, and that conduct which may appear to be minor in isolation can reasonably have the relevant effect when viewed cumulatively or in light of previous related incidents and experience.

We recommend strengthening the guidance on relevant evidence. While it is appropriate to recognise that not all conduct will reasonably have the alleged effect, the Code should distinguish between unreasonable hypersensitivity and foreseeable responses arising from known circumstances, **including previous experiences of harassment or abuse** where these are relevant and known.

Employers should also be advised not to rely on irrelevant information about a worker’s character, previous consensual interactions, delayed reporting or post-incident behaviour when assessing complaints. Providing greater guidance on these issues would support fairer, more consistent and trauma-informed investigations, while helping employers meet their duty to take reasonable steps to prevent harassment and fostering greater confidence in workplace complaint processes.

Para 1.14 - It’s unclear what changes will be made to paras 1.8 and 1.20 in relation to AI generated imagery. Where is it in the guidance? - Do you mean paras 1.8 and 1.20 in the current technical guidance which will be updated – we wonder if this is confusing because there doesn’t seem to be proper read across between the existing document and the way the new document will read (in giving comments here, it has **been** quite hard to understand where the changes will be made). 1.8 in the existing technical guidance is “Meaning of ‘unwanted conduct” which lists examples of behaviour which could amount to unwanted conduct; 1.20 is where examples of ‘conduct of a sexual nature’ are provided Sexual harassment and harassment at work: technical guidance | EHRC

It is important to highlight AI generated images/ deepfakes as there are growing concerns in this area – would it be helpful to include as a specific case study example to help employers understand this further and how they can be proactive /respond? More broadly, the examples address online/digital third-party harassment, but not digital harassment between colleagues – Teams, Slack, WhatApp, virtual meeting conduct, out of hours group chats. With hybrid and remote work standard, this too needs to be covered.

Section 2 – The Preventative Duty

Para 2.3 - At present the insertion by the ERA 2025 of the word ‘all’ is to the preventative duty is only referenced in the last sentence of para 2.3. To emphasise that employers now must take ALL reasonable steps, should ‘all’ be inserted in second sentence relating to positive and proactive reasonable steps? Ditto for para 2.8 - state ‘**all** reasonable steps’ in opening sentence.

It would also be helpful to provide some guidance on how in practice taking ‘**all** reasonable steps’ differs from employers currently having a duty to take ‘reasonable steps’ (i.e. the new duty/test will be similar to the current employer’s defence) - how does it raise the bar in terms of the steps expected of employers? Ie Employment Tribunals will investigate whether there were any other actions the employer could reasonably have done, and not just whether they did something... In other words, the addition of the word 'all' does matter in practice and the Guidance should state this explicitly rather than leaving employers to infer it.

Para 2.3 -Could it be made clearer still what an 'anticipatory' duty means in terms of the proactive practical actions that an employer would be expected to take as part of a risk assessment to be compliant regardless of whether any sexual harassment has occurred?

Para 2.8 - as above, the emphasis on the addition of 'all' by the ERA 2025 could be improved, by inserting 'all' into the first sentence of this para.

Para 2.11 - There is an example of third party harassment (Example D) - would it be helpful to give some further examples in 2.11 of the range of third parties (that could be extensive given the variety of employers' business operations and service delivery etc.)? We note further examples of third parties appear later at paragraph 2.19, it would be helpful to bring these forward so readers see the full range of third-party scenarios when the concept is first introduced.

We do appreciate that once the Employment Rights Act 2025 changes come into force in October 2026, there will be some practical read across between different duties and steps employers can take, but we are concerned that readers will become confused as to whether this paragraph relates to sexual harassment by third parties, under the current preventative duty, or whether it is moving on to the new 'standalone' duty to prevent third party harassment introduced by the Employment Rights Act 2025.We consider that the updated guidance needs to be much clearer that this section relates to third party sexual harassment within the context of the preventative duty.

Could Example D be expanded to include example of the practical/reasonable steps it could have taken to anticipate the risks from customers attending the warehouse?

Further, it could be helpful to include another example of online/digital harassment by a third party to emphasise that liability extends to areas like social media, emails etc.

Para 2.13/2.14 - This means that to fulfil the anticipatory duty by taking preventative measures, employers need to assess the risks specific to their operations and workforce, so could be worth mentioning as 'depends on the **fact** and circumstances', while true, sounds a little vague. Eg different industries and job roles will present different risks and different necessary preventative steps – eg a hospitality company, client entertaining versus a manufacturing plant...a lone worker or one working late shifts etc

Could be worth pointing out that it isn't possible for an employer to identify every possible risk but important to gather as much feedback as possible from workers, their networks and employee resource groups and use other channels to understand the risks from their perspective. As well as policies and training (Example D and following paras) it could be helpful to mention ongoing education of the whole workforce, including expected standards of behaviour, as well as training and guidance. Training for line managers should also cover behavioural competency – e.g. how to spot and challenge inappropriate behaviour – and where workers can go for support.

Might it be appropriate to flag in the Guidance that the Government has power to issue regulations outlining certain 'reasonable steps' although none have been issued so far? So that readers understand that this may change, or that there may be clearer steps coming? If Regs are issued, presumably the guidance will be updated to account for this.

Para 2.15 - would it be helpful to add a bullet here reminding employers to keep notes of decisions as to whether they consider a step to be 'reasonable' or not, including details of why it was decided that it would not be reasonable to take that step – e.g. because too expensive based on all the circumstances. This will make it clear that it is important to be able to evidence how employers must comply with the preventative duty.

Note: Example E is very illustrative/comprehensive!

In example E there is reference (2nd full para) to paragraphs 3.44 to 3.91 'for more information about employer liability for harassment' - not sure if these paras will stay as they are in the updated guidance or are to be changed – and so if this reference needs to be changed. At present, para 3.44 lists acts of harassment for which employers are liable (NOT the preventative duty) and doesn't include Acts committed by a third party or employee/worker of a third party.

Para 2.19 - as we have commented in relation to para 2.11 we are concerned about the risk of users becoming confused about the conflation of the preventative duty in relation to sexual harassment, and the new standalone duty to prevent harassment by third parties introduced by the Employment Rights Act 2025. We think that these two paragraphs could be brought together.

Mention here that sexual harassment by a third party could be online/digital?

Para 2.24 - could be clearer for organisations in terms of understanding what the last sentence means – ie '*the preventative duty does not depend on an incident of sexual harassment taking place to be enforceable by us*.' Does this refer to the enforcement power, and can the para explain why it's enforceable if there has not been sexual harassment?

Para 2.26 - It would be helpful to provide a link to how an employee or employer can report concerns and breach of the duty. The link should include information about procedures, process, and timescales.

Increase in Compensation for sexual harassment; Para 2.27 - as we understand it, this part of the guidance is still about the preventative duty, enforceable by the EHRC, which does not lead to compensation in the employment tribunal, We wonder if it would provide more clarity to include a sentence here to say "***While an employee or worker cannot bring a 'standalone' claim in the Employment Tribunal that an employer has failed to take all reasonable steps to prevent sexual harassment under the preventative duty, the duty is relevant when an employee or worker brings a claim of sexual harassment under the Equality Act 2010***."

Para 2.29 and 2.30 - Although covered in Example H, perhaps make clearer by also stating in para 2.29 or 2.30 that the 25% compensation uplift applies to both the loss of earnings element and injury to feelings, so the overall compensation package? (S.124(2)(b); s.124A Equality Act 2010 provisions) but again, our comment in relation to para 2.27 applies here.

Section 3 – Third party harassment and employer liability

Para 3.10 - it could be helpful to have more detail and examples of how different industries and job roles and relationships with third parties can affect an organisation's risk profile – e.g. an organisation with a large number of customer-facing roles such as hospitality, frontline public services, retail carry higher risk, as do roles that involve lone working; what about a company's operations where there is alcohol present; other factors to take into account include the nature of the third party and whether there is a contractual relationship, whether there are power imbalances, e.g. an important client with significant commercial value to the employer, or a regulatory body.

3.11 - Perhaps this para could be stronger in the expectations and the reasonable steps that could be taken by an employer to prevent harassment by third parties? Example I is helpful and provides a range of helpful practical preventative steps that the bar owner could have taken.

More generally, what about contract clauses with clients and suppliers that set out expectations for appropriate conduct towards the employer's staff from the outset, as a preventative step if appropriate? This emerges in Example K but it could be helpful to include in a list of potential reasonable preventative steps at the beginning of the chapter on third party harassment, with the examples then illustrating key points.

Section 4 – We understand that this section relates to all harassment. On that basis we think that the new para 4.4 needs to reference 'practical steps to prevent harassment by other workers/the employer' rather than just talking about practical steps to prevent third-party harassment. So, para 4.4. could have an additional sentence at the start *"While the preventative duty in respect of sexual harassment is separate to the employer's liability for harassment, the steps an employer can take to comply with the preventative duty in respect of sexual harassment are the same as the steps it can take to be able to defend a claim for harassment. Examples of these steps are listed earlier in this guidance [AND INSERT RELEVANT PARAS]."* This would then lead into the rest of the para about the different steps needed to prevent third party harassment.

Would it be helpful to have the guidance set out in Section 4, including the practical steps, further up, before the examples of harassment? This would give employers the practical guidance they need sooner in the document.

Para 5.1 - last bullet point – should this read ‘complainant’ rather than ‘complaint’ *or* ‘complaint concerns a witness...etc’?

Confidentiality agreements – para 6.10 - just to note that the Government is currently consulting on what will be referred to in future as ‘excepted agreements’...