

Worker Protection (Amendment of Equality Act 2010) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Cabinet Office with the consent of Baroness Burt of Solihull, the member in charge of the Bill, have been ordered to be published as HL Bill 101—EN.

Worker Protection (Amendment of Equality Act 2010) Bill

[AS BROUGHT FROM THE COMMONS]

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[AS BROUGHT FROM THE COMMONS]

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Make provision in relation to the duties of employers and the protection of workers under the Equality Act 2010.

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Liability of employer for harassment of employee by third parties

(1) The Equality Act 2010 is amended as follows.

(2) In section 40 (employees and applicants: harassment), after subsection (1) insert—

“(1A) The circumstances in which A is to be treated as harassing B under subsection (1) include those where— 5

- (a) a third party harasses B in the course of B's employment, and
- (b) A failed to take all reasonable steps to prevent the third party from doing so.

(1B) A third party is a person other than— 10

- (a) A, or
- (b) an employee of A's.

(1C) Subsection (1D) applies if and so far as—

- (a) a third party harasses B in the course of B's employment,
- (b) the harassment falls within section 26(1) (unwanted conduct related to a relevant protected characteristic) and not within section 26(2) or (3) (unwanted conduct of a sexual nature etc), 15
- (c) the conduct constituting the harassment involves a conversation in which B is not a participant, or a speech which is not aimed specifically at B, 20
- (d) the conversation or speech involves the expression of an opinion on a political, moral, religious or social matter,
- (e) the opinion expressed is not indecent or grossly offensive, and
- (f) the expression of the opinion does not have the purpose of violating B's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for B. 25

- (1D) For the purposes of subsection (1A)(b), A is not to be treated as having failed to take all reasonable steps to prevent the harassment solely because A did not seek to prevent the expression of the opinion.”
- (3) In section 109 (liability of employers and principals), after subsection (4) insert— 5
- “(4A) Subsection (4B) applies if and so far as—
- (a) A harasses another employee (C) in the course of C’s employment,
 - (b) the harassment falls within section 26(1) (unwanted conduct related to a relevant protected characteristic) and not within section 26(2) or (3) (unwanted conduct of a sexual nature etc), 10
 - (c) the conduct constituting the harassment involves a conversation in which C is not a participant, or a speech which is not aimed specifically at C,
 - (d) the conversation or speech involves the expression of an opinion on a political, moral, religious or social matter, 15
 - (e) the opinion expressed is not indecent or grossly offensive, and
 - (f) the expression of the opinion does not have the purpose of violating C’s dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for C. 20
- (4B) For the purposes of the defence in subsection (4), B is not to be treated as having failed to take all reasonable steps to prevent the harassment solely because B did not seek to prevent the expression of the opinion.”

2 Employer duty to prevent sexual harassment of employees

After section 40 of the Equality Act 2010 insert— 25

“40A Employer duty to prevent sexual harassment of employees

- (1) An employer (A) must take all reasonable steps to prevent sexual harassment of employees of A in the course of their employment.
- (2) “Sexual harassment” in subsection (1) means harassment of the kind described in section 26(2) (unwanted conduct of a sexual nature). 30
- (3) A contravention of subsection (1) (or a contravention of section 111 or 112 that relates to a contravention of subsection (1)) is enforceable as an unlawful act under Part 1 of the Equality Act 2006 (and, by virtue of section 120(8) and (9), is enforceable only by the Commission under that Part or by an employment tribunal in accordance with section 124A (compensation uplift in employee sexual harassment cases)).” 35

3 Enforcement of duty to prevent sexual harassment of employees

In section 120 of the Equality Act 2010 (jurisdiction of employment tribunal)—

- (a) in subsection (8), for “a reference to section” substitute “references to section 40A(1) or”; 40

(b) after that subsection insert—

“(9) Subsection (8) does not prevent an employment tribunal from considering a contravention of section 40A(1) in accordance with section 124A (compensation uplift in employee sexual harassment cases).”

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4 Sexual harassment of employees: compensation uplift

After section 124 of the Equality Act 2010 insert—

“124A Remedies: compensation uplift in sexual harassment cases

(1) This section applies where—

(a) an employment tribunal has found that there has been a contravention of section 40 (harassment of employees) which involved, to any extent, harassment of the kind described in section 26(2) (sexual harassment), and

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(b) the tribunal has ordered the respondent to pay compensation to the complainant under section 124(2)(b).

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(2) The tribunal must consider whether and to what extent the respondent has also contravened section 40A(1) (duty to take reasonable steps to prevent harassment of employees).

(3) If the tribunal is satisfied that the respondent has contravened section 40A(1), it may order the respondent to pay an amount to the complainant (a “compensation uplift”) in addition to the compensation amount determined in accordance with section 124(6).

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(4) The amount of the compensation uplift—

(a) must reflect the extent to which, in the tribunal’s opinion, the respondent has contravened section 40A(1), but

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(b) may be no more than 25% of the amount awarded under section 124(2)(b).”

5 Consequential amendments to the Equality Act 2006

(1) Part 1 of the Equality Act 2006 (the Commission for Equality and Human Rights) is amended as follows.

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(2) In section 21 (unlawful act notice), after subsection (7) insert—

“(8) Subsection (7) applies as though a claim could be made to an employment tribunal in respect of—

(a) an alleged contravention of section 40A(1) of the Equality Act 2010 (duty to take reasonable steps to prevent harassment of employees), or

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(b) an alleged contravention of section 111 or 112 of that Act which relates to a contravention of section 40A(1) of that Act.”

- (3) In section 24A (enforcement powers: supplemental), in subsection (1), after paragraph (a) insert—

“(aa) an act which is unlawful because it amounts to a contravention of section 40A(1) of that Act (or to a contravention of section 111 or 112 of that Act that relates to a contravention of section 40A(1) of that Act) (employer duty to take reasonable steps to prevent sexual harassment of employees),”.

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6 Extent, commencement and short title

- (1) This Act extends to England and Wales and Scotland.
- (2) This section comes into force on the day on which this Act is passed.
- (3) Sections 1 to 5 come into force at the end of the period of one year beginning with the day on which this Act is passed.
- (4) This Act may be cited as the Worker Protection (Amendment of Equality Act 2010) Act 2023.

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