



CASE FILE

What is the role of non-disclosure agreements in settling sexual harassment cases in the workplace, and should their use be limited further?

What is Sexual Harassment?

S.26(1) Equality Act 2010: harassment is defined as 'unwanted conduct related to a relevant protected characteristic' and 'with the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B'.

S.26(2): A also harasses B if—
(a) A engages in unwanted conduct of a sexual nature, and
(b) the conduct has the purpose or effect referred to in subsection (1)(b).

The Current Law

Action can be taken in one of two ways:

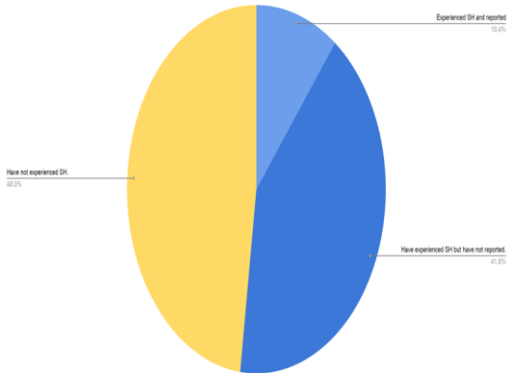
1. The employee can take the matter to an Employment Tribunal by submitting an ET1 claim form.
2. It is more likely however that the matter will be settled privately between the employer and employee using a non-disclosure order to keep matters confidential as they are legally binding.

Suggested Reforms

1. Create a body of cases.
2. Ensure the limits of confidentiality clauses are clear to the worker.
3. Amend the specific duties for employers in England so they align more closely with the more extensive specific duties in Wales.
4. Re-establish S.40 of the Equality Act to provide protection from harassment from third parties.
5. Protect Equality and harassment laws post-Brexit, ensuring that ministerial powers are limited in regards to amending or altering existing Equality law in the UK.

Statistics

How many people have experienced sexual harassment



- No experience of sexual harassment (SH) at work.
- Have experienced SH and reported.
- Have experienced SH and did not report.

Trade Union Congress 2016: 'Still just a bit of banter?'

What about Brexit?



EU Charter of Fundamental Rights

Article 21:

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features [...] shall be prohibited.

Conclusion

The current laws in place to protect an individual from harassment in the workplace are a good starting point. However, further developments are required to ensure that there is a clear procedure available to victims in order to encourage reporting of such behaviours.

Employers must be put under pressure to enforce these procedures as well as being held responsible for inappropriate behaviour by both their employees and by third parties.

The use of non-disclosure agreements is often necessary in an employment setting, but this needs to be limited and monitored closely to ensure that they are not being used unethically to prevent victims from speaking out.

SIGNED:

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