

Increased Timeframe for Raising Personal Grievance Related to Sexual Harassment.

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As from 13 June 2023 employees have 12 months to raise a personal grievance related to sexual harassment.

This is an exception to the normal rule under the Employment Relations Act 2000 (Act), where employees have **90 days** to raise a personal grievance. The change is intended to recognise that employees who have been subject to sexual harassment can take some time to come forward with their complaint.

What is sexual harassment?

Sexual harassment can take many forms, from the obvious – unwanted physical contact – to the less obvious, but still damaging, examples of comments on appearance, sexualised suggestions, baited questions or sexualised behaviour or pictures/images. It also includes implied or overt promises of preferential treatment (or the threat of detrimental treatment) in exchange for any form of sexual activity.

The key is that the behaviour is:

- **Unwelcome** to the person who receives it. The law doesn't care whether the harasser knows their behaviour is unwelcome, and the recipient of the behaviour isn't obliged to say anything (often doing so is very difficult). The only question is whether the behaviour is unwelcome.
- Either by its nature, or because it is repeated, has a **detrimental effect** on the recipient's job or job satisfaction.

It also doesn't matter if the behaviour is normal in a particular workplace or industry. If it's sexual, unwelcome, and detrimental, it's illegal.

When does the 12 months run from?

- If the employee is sexually harassed by the employer or a director, manager, or supervisor then 12 months runs from the date the sexual harassment occurs (or, if later, from when the employee became aware of it).
- If the employee is sexually harassed by someone else (a fellow employee, customer, or client) then the employee must first bring the sexual harassment claim to the employer's attention. The employer must then investigate the claims and, if appropriate, do everything reasonably practicable to prevent further instances of sexual harassment occurring again. If sexual harassment occurs again, and the employer has not done everything reasonably practicable to prevent it, then the

employee will have grounds for a personal grievance claim. In that scenario, the 12 months runs from the date the subsequent sexual harassment occurred.

It is also worth noting that if an employer fails to properly respond to claims of sexual harassment, that may also in itself provide grounds for a personal grievance claim. Such claims would be subject to the normal 90-day time period for raising a grievance.

Note the new law is not retrospective. If the sexual harassment occurred before 13 June 2023, then the 90-day period still applies (unless the employee wasn't aware of the harassment until after 13 June, but that will obviously be rare).

Do employers need to do anything in response to this change?

In short, yes. You need to update your templates and use new wording in your new employment agreements. You don't need to update your existing agreements.

By law, employment agreements are required to include provisions advising an employee about the timeframe for raising a personal grievance. Prior to 13 June 2023 this timeframe was 90 days, irrespective of the grounds for the grievance claim.

However, employers now need to ensure new employment agreements refer to the 12-month period for raising a grievance for sexual harassment, as well as the 90-day period that applies in other cases. A link to the required new wording can be found in the website article.

Employers do not need to update existing employees' employment agreements to reflect this change. However, employers should consider notifying existing employees about this change to the law.

Employers could also take this opportunity to review their sexual harassment policies, and to ensure they have robust policies and procedures in place that clearly set out how the employer will respond to complaints about sexual harassment. If those policies refer to the timeframe for raising a personal grievance, they will obviously also need to be updated to refer to the new 12-month timeframe.

This may also be a good time for employers to step back and assess their company and/or team culture. By now, organisations will be well aware of the potential risk these claims can create, but it's relatively easy for poor behaviours to creep in and form part of the fabric of a work environment. That, in turn, can have devastating effects on particular employees, even if that isn't intended, or appreciated. This is therefore an area that requires ongoing vigilance and care.

Please feel free to contact us if you need help to review and update your employment agreements or policies. We can also help with training.

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