

# Sexual harassment in the workplace

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The pandemic has brought increased flexibility in working from home to many, but has also led to an increase in online sexual harassment. Earlier this year the women's rights charity, Rights of Women, conducted a survey which found that, since the beginning of the pandemic, women have experienced a surge in online sexual harassment whilst working from home, as harassers take advantage of online work platforms and social media.

The early days of the pandemic saw the development of "Zoombombing" where uninvited participants hacked into video calls with the purpose of disrupting or harassing the call. While video platforms have since tightened security in response to this, women are still reporting online harassment from work colleagues and clients via these platforms.

The pressing issue of sexual harassment was raised at the Generation Equality Forum – a summit to establish the global agenda on women's rights over the next 10 years – which took place in Paris between 30 June and 2 July 2021. A main focus of the summit was whether governments should ratify the ILO Violence and Harassment Convention which is the first international convention in the world that expressly aims to safeguard employees from sexual harassment in the workplace. It concluded with an announcement of bold gender equality commitments and the launch of a five-year action journey to accelerate gender equality by 2026. According to UN Women, who convened the Forum, government commitments are expected to total around US\$7 billion. Both France and Canada have pledged US\$100 million each to improve access to contraceptives and family planning, and fund care work in low-income countries. While the main pledges have been made by governments, multilateral institutions and philanthropic foundations, there have also been some private sector players present at the Forum.

Procter & Gamble (P&G), the consumer goods company, has committed to investing US\$10 billion in women-owned and women-led businesses by 2025 to advance women's economic empowerment. In addition, they are partnering with several organisations to accelerate progress and drive change, including UN Women and the women-owned business global networking community WEConnect International.

The global payments company, PayPal, announced that they will be committing more than US\$100 million to advance financial inclusion and economic empowerment for women and girls around the world. Their commitment includes several external and internal investments spanning the next five years. They will deposit US\$100 million of their capital into investment funds and depository institutions that are led by women or focused on serving women, as well as investing US\$7 million in partnerships to increase access to microloans for women entrepreneurs and conducting annual assessments to ensure that the company's policies and benefits regarding pay equity, paid leave, caregiver support and workplace sexual harassment prevention meet or exceed best practices.

From an employment perspective, the Equality Act 2010 currently prohibits three types of harassment:

- harassment related to a protected characteristic (of which one such protected characteristic is sex);
- sexual harassment (i.e. unwanted conduct of a sexual nature that has the purpose or effect of violating the

complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them); and

- less favourable treatment because the employee rejects or submits to unwanted conduct of a sexual nature or that is related to gender reassignment or sex.

Employers are, on the face of it, liable for sexual harassment committed by their employees during the course of their employment, regardless of whether those acts were carried out with the employer's knowledge or approval. However, an employer may be able to avoid liability for such acts where it can demonstrate that it took all reasonable steps to prevent it.

A claim under the Equality Act is not the only potential exposure for an employer. An employee, who has been subjected to sexual harassment, may also be able to bring a claim for constructive unfair dismissal on the grounds of a breach to the implied term of mutual trust and confidence between employers and employees.

With this in mind, it is important for employers to take steps to prevent harassment from occurring in the workplace.

The Rights of Women report also demonstrated that 72% of women experiencing sexual harassment at work do not feel their employer is doing enough to protect or support them and nearly a third of women reported that their employers' response to sexual harassment reports have been negatively impacted by the pandemic. When dealing with harassment at work, prevention is better than cure. Raising awareness that the company has a zero tolerance to behaviours of this nature, and engaging with employees through training, are key ways in which an employer can help avoid instances of sexual harassment at the outset.

In January 2020, the Equalities and Human Rights Commission published guidance for employers on sexual harassment in the workplace. This includes practical advice and steps that employers can take such as:

- developing an effective anti-harassment policy;
- providing training for employees with regular refreshers;
- simplifying the reporting process;
- acting quickly and fairly when a complaint is made;
- protecting staff from harassment by a third party i.e. clients or customers.

The company's office culture, whether virtual or in-person, is vital in fostering a positive working environment. Employers should highlight the importance of respect between employees at every level of the company, encouraging a supportive and inclusive culture so that employees' behaviour reflects the right values.

For further advice on how to address and help sexual harassment in your workplace, please contact us.

## Your Key Contacts

### **Imogen Dean**

Associate, London

D +44 20 7246 7593

M +44 7741 322927

[imogen.dean@dentons.com](mailto:imogen.dean@dentons.com)