

When the customer isn't right

Legislation has recently been introduced requiring employers to protect staff from harassment by customers. Nick Thorpe explains what steps employers should be taking to comply with the new legislation.

The Problem

I own several hotels in the Midlands, employing nearly 100 staff, I have heard that a new law is coming into force soon that will mean, as an employer, I will be duty-bound to protect them from harassment by customers. When does this come into effect, and how can I ensure that I fulfil my duty as an employer under this new law?

The Law

New regulations amending the Sex Discrimination Act 1975 came into force on 6 April 2008 which require employers to protect their staff from sexual harassment by customers, suppliers and others. The regulations extend employer liability to circumstances where a customer subjects an employee to sexual harassment in the course of their employment and the employer has failed to take reasonably practicable steps to prevent the harassment, in circumstances where the employer knew that the employee had been subjected to harassment on at least two other occasions.

Expert Advice

Harassment is defined by the Sex Discrimination Act as “any unwanted conduct [related to a person's sex] that has the purpose of violating [that person's] dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for [that person]”. It can therefore cover a very wide range of behaviours, including suggestive remarks, teasing and taunting of a sexual nature, unwelcome physical conduct or sexual advances, and sexual bantering.

Whilst most employers have taken steps to stamp out this type of behaviour amongst employees, by introducing clear policies and procedures designed to educate employees on harassment and by taking disciplinary action when necessary, sexual harassment by customers remains rife in the hotel and catering industry. The potential for claims is therefore very high.

While the old adage “the customer is always right” may be valid in some situations, when a complaint alleging hostile or harassing behaviour on the part of a customer is made by an employee, it is critical for an employer to remember that the customer is not always right.

So what reasonably practicable steps can an employer put in place to avoid liability under this new law?

While an employer will only be liable where he knew that the employee had been subjected to harassment on at least two other occasions, the previous incidents do not have to be committed by the same customer. Therefore, whilst it may be reasonable for an employer to take specific action against a “problem” customer, consideration should also be given to ways in which such behaviour can be prevented by any customer.

Introducing a written policy and training for staff which make it clear that this type of behaviour will not be tolerated is a start. However, an anti-harassment policy is unlikely to be read by a customer. Employers should therefore consider displaying notices directed at customers which make it clear that such behaviour is not tolerated. An employer should also be prepared to take immediate steps when a complaint about a customer is voiced by an employee, including, if necessary, asking the customer to leave.

Check List

Immediate steps should be taken to prevent unlawful harassment by customers. These include:

- Reviewing and updating existing anti-harassment policies and training to reflect the change in the law
- Displaying notices directed at customers making it clear that harassment is not tolerated
- Taking appropriate action when a complaint about a customer is voiced by an employee

Beware!

If an employer fails to take reasonable steps to protect an employee from harassment by a customer, the employee may seek to bring a claim for compensation, including “injury to feelings”, in the Employment Tribunal. Compensation for loss of earnings is unlimited in harassment claims and employees can be awarded between £500 to £25,000 for “injury to feelings”, depending upon nature of the harassment.

Contact

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