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Employment Law Update

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Introduction to Nelsons







Nelsons was formed in 1983 in a small office in Nottingham and since then has grown to become one of the leading law firms in the East Midlands with offices in Derby, Leicester and Nottingham providing expert support and advice to businesses, individuals and families with their legal and investment needs.

At Nelsons, we look to empower our clients, give them a voice, fight for them, help them seek justice and steer them through the complex issues they face. Our core values form the backbone of how we aim to go about delivering our services and living out our purpose. The desire to push ourselves forward to better serve our clients has been a constant throughout our evolution.

In May 2023, Nelsons joined Lawfront which was a strategic move for us to realise the bold and ambitious plans we'd set out to achieve; and to ensure we continue to offer our clients the best possible service.

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Section 40A Equality Act 2010 (via the Worker Protection (Amendment of Equality Act 2010) Act 2023)

- From 26 October 2024, employers will have a duty to take *reasonable steps* to prevent sexual harassment of its employees in the workplace.

- The new preventative duty extends to cover harassment by third parties, as well as other employees.

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Consequences for breach of the preventative duty

- 25% compensatory uplift
- Enforcement from the Equality and Human Rights Commission

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What does this mean for employers?

- You should **not** wait for sexual harassment to take place before taking action.

- What an Employment Tribunal will consider to be *reasonable steps* will depend on factors such as the size of the employer and the sector they operate in.

- Whilst different employers may prevent sexual harassment in different ways, no employer is exempt from the new preventative duty.

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What can employers do to comply?

- assess the risks of sexual harassment occurring in the course of employment;
- consider how those risks can be reduced or prevented;
- consider which of those steps it would be reasonable for it to take;
- implement those reasonable steps;
- consider reviewing and updating policies and procedures;
- review third parties that come into contact with employees;
- provide regular training on sexual harassment; and
- make employees aware of the support available to them.

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Social Worker Case

- The Claimant was disabled and suffered from depression and anxiety. She had worked for the Respondent since 2004.
- Allegations were made in 2018 concerning her conduct and administration. But details were not given.
- By early 2019, her mental health was suffering and her anxiety levels increased due to these comments.
- In 2020 she resigned and claimed constructive dismissal

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Employment Tribunal findings:

- The Claimant was successful!

- *" It is our judgment that the claimant resigned because she believed that she could not trust the respondent and that it was an unsafe place to work and because it was likely that this could happen again, given that there had been no sanctions applied to those who had made unfounded complaints against her and refused to accept that they were so"*

- Main takeaways:
    - investigate complaints thoroughly;
    - review policies and procedures regularly; and
    - ensure staff know and understand policies and procedures.

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Rastafarian guardsman case

- July 2021 the Claimant left his ID card behind when leaving the barracks to make a phone call, following a medical appointment. The Claimant was wearing civilian clothes, as he was not on duty. He had difficulty getting back in.

- "*this gentleman thinks he's left his ID inside*"

- "*If you're going to make it into a race thing, then I'm not interested*".

- The Claimant reported the issue suggesting mediation and was told he would face disciplinary action instead. After raising an unsuccessful service complaint, the Claimant brought a claim in the Employment Tribunal.

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Employment Tribunal findings

- The judge said that the race card incident amounted to an act of discrimination, and it would be "*inconceivable*" that a white person would face the same accusation.

- He added that "*it was clear that the senior personnel were less concerned with tackling racism and more concerned with upholding conduct standards*", and that they "*wilfully ignored*" the fact that any sort of discrimination was against the Army's code of conduct.

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Employee with gender-critical beliefs brings successful harassment claim

- A social worker was suspended and subjected to a long disciplinary process after posts she had shared on social media were sent to her regulator.

- The posts included a link to a petition which stated women should have the right to maintain sex-based protections set out in the Equality Act, including female only spaces such as changing rooms and hospital wards.

- The posts also included a post from a sex-based rights campaign group and a petition which said that male athletes should not compete in female sports.

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Employment Tribunal findings:

- The Claimant's posts "*fell within her protected rights for freedom of thought and freedom to manifest her beliefs as protected under Articles 9 and 10 of the Human Rights Act*"
- The Respondent was ordered to pay the Claimant.
- Exemplary damages are "*designed to punish conduct that is oppressive, arbitrary or unconstitutional*" and are reserved for "*the most serious abuses of governmental power*"
- The tribunal also ordered the Respondent and Regulator to ensure all managers, HR staff, triage staff, investigation staff and case examiners receive training on freedom of expression and protected belief within 6 months of the judgment

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£3.2 million awarded to executive called an "*old fossil*" in age discrimination claim

- The Claimant was a senior executive at a FTSE 250 engineering firm on a salary of £300,000 per year. He had worked for the Respondent for almost 40 years.

- He was subjected to a 45 minute lecture describing how he was an "*old fossil*" and how he "*didn't know how to deal with millennials*"

- The Claimant was dismissed and replaced by a younger, female manager shortly after the Respondent implemented a policy that encouraged managers not to recruit people who were over the age of 45. The Respondent's reason for the policy was so that they would only hire people "*with enough time left in their career in order to develop*"

- The Claimant was 58 when he was dismissed by the Respondent. It is worth noting that the Claimant's successor was 51 years old.

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What can we do to help?

- Review and amend policies, procedures and contracts of employment
- Advise on and conduct disciplinary and grievance matters and any appeals
- Provide training to staff and deliver important employment law updates
- Advise on and assist with Employment Tribunal claims
- Provide advice on all employment law issues at all stages

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