



Global trends CEOs can't ignore: the new era of harassment prevention

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15 July 2024



Workplace sexual harassment prevention is undergoing a seismic transformation worldwide. Catalysed by movements like #MeToo and increased willingness of affected employees to present claims, legislators are shifting from reactive to proactive approaches.

Companies now face new legal obligations to prevent harassment before it occurs. As more jurisdictions adopt these preventive duties and ESG considerations gain prominence, stakeholders are demanding enhanced transparency and cultural changes.

For today's business leaders, effective harassment prevention is fast becoming both a legal necessity and a cornerstone of corporate responsibility.

Legal landscapes in flux

The shift towards proactive measures is exemplified by the EU's Corporate Sustainability Due Diligence Directive (CS3D). This pioneering legislation mandates companies protect human rights throughout their operations and supply chains.

"Human rights" are widely defined and include prohibitions of "degrading treatment" in the workforce, which is capable of capturing sexual harassment. EU Member States will need to evaluate and potentially strengthen their laws to align with these standards.

Companies failing to take appropriate measures to stop this behaviour will risk litigation, penalties and damaging publicity. This approach heralds a new era where harassment prevention is considered integral to companies' overall sustainability and ethical standings.

The UK's new law, taking effect on 26 October 2024, places a duty on employers to proactively prevent sexual harassment. By introducing a 25% compensation uplift for harassment claims where employers breach their prevention duty, the UK is creating a powerful financial incentive for proactive measure compliance.

Curiously, this duty currently only applies to sexual harassment and does not extend to other forms of harassment.

Meanwhile, the Financial Conduct Authority is considering broadening its regulatory scope to investigate non-financial crimes, potentially penalising firms with inadequate anti-harassment controls and separate enforcement action against senior managers for failing to manage these controls.

Italian employers are already required to proactively implement appropriate measures to not only minimise sexual harassment, but any forms of bullying, harassment and unacceptable behaviour. This includes targeted training, mandatory guidance and speak up policies.

In Spain, measures to prevent sexual harassment are covered under employers' obligations to create and implement Equality Plans. One of these obligations is to implement a protocol to prevent sexual harassment and harassment on grounds of sex.

In addition, the "only yes is yes" law, introduced in 2022, requires employers to promote awareness and offer training for comprehensive protection against sexual violence to all employees. Companies must establish specific procedures to prevent such behaviour from occurring and address employee complaints.

Australia has set an even higher bar. Its recent laws go beyond sexual harassment, requiring employers to take reasonable and proportionate measures to eliminate sexual harassment, sex-based harassment, sex discrimination, hostile work environments, and victimisation.

The government's stated intention is to ensure that "employers must continuously assess and evaluate whether they are meeting the requirements." The Australian Human Rights Commission also has new powers to monitor and enforce compliance, including to conduct inquiries, compel production of documents and pursue court action to direct compliance.

While the new laws include some concepts drawn from work health and safety laws, employers must ensure both sets of duties are followed. This holistic approach recognises that harassment does not occur in isolation but is often part of broader systemic issues.

And it is not just Western countries at the forefront of this legislative change.

China recently updated its Law on Protection of Women's Rights and Interests to include a range of mandatory steps employers must take to proactively prevent and address sexual harassment in the workplace.

These include mandatory policies and training, implementing safeguards to prevent sexual harassment, establishing an internal reporting mechanism and employing investigation and handling procedures. If an employer fails to take these steps, the local authority is empowered to order corrective action. Since the new law came into force on 1 January 2023, Chinese authorities have issued several implementation rules to help employers refine and enhance their policies.

In Singapore, the Protection from Harassment Act (POHA) has been in place since 2014 to strengthen harassment laws. The POHA provides for both civil remedies and criminal sanctions to protect against harassment.

More recently, and with a view to tackle workplace harassment in particular, the Ministry of Manpower has announced new Workplace Fairness Legislation (WFL) to strengthen the overall framework for workplace fairness. Once enacted, the WFL is expected to provide remedies for harassment in the workplace, including the appropriate enforcement levers against discriminatory acts by errant employers.

India recently marked 11 years of its Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act. This act sets out extensive obligations on employers when handling sexual harassment complaints. In particular, employers are required to set up an internal committee to handle such complaints, the presiding officer of which must be female and not less than half of the committee members must be female.

In a recent Supreme Court judgment, the court issued directives regarding the effective implementation of the act, including that employers must regularly conduct orientation sessions, workshops, seminars and awareness programmes to upskill members of the internal committee and must educate female employees about their rights under the Act.

India's parliament is also considering extending the limitation period for filing a sexual harassment complaint from three months to one year from the date of the harassment act or the last in a series of acts.

Navigating cross-border challenges

For multinational corporations, implementing a consistent anti-harassment strategy across different jurisdictions presents unique challenges:

- Cultural differences can make global policies difficult to implement uniformly. What is considered appropriate behaviour in one country may be offensive in another, requiring careful calibration of training modules and reporting mechanisms.
- Legal requirements for training also vary between jurisdictions. Global training can assist with setting expectations for workforce behaviour, but may need to be supplemented for local content requirements.
- The use of non-disclosure agreements (NDAs) in harassment cases is another area of growing complexity. While NDAs have long been a standard tool for protecting corporate interests, their use in harassment cases is coming under increased scrutiny. For example, in the UK, a recent report into issues facing women in financial services ("Sexism in the City") recommended an outright ban on the use of NDAs in sexual harassment cases.
While the government has since refused to implement the recommendation, it has said that NDAs will most likely be unenforceable when they relate to reporting crime to the police or cooperating in a criminal investigation.
Australia may be following suit, with recent guidance from a federal council suggesting NDAs should not prevent organisations from responding to systemic issues.
- Addressing misconduct outside of work hours or off-premises also poses unique challenges. Employers must navigate these complexities while determining when to involve third parties such as law enforcement or regulatory bodies.
- Investigating these matters requires a different skillset and approach to regular internal investigations. Given the reliance on individual testimonies, careful consideration of whistleblower protections and anonymity claims is crucial.

Interviewers need specialist training to handle interviews sensitively yet effectively. Weighing up differences in accounts while factoring unconscious bias, trauma and cultural norms is not easy.

The changing face of corporate responsibility

For multinational corporations, these developments present both challenges and opportunities. Companies that can successfully navigate this new landscape may find themselves with a significant competitive advantage, both in terms of talent acquisition and retention, and in the eyes of increasingly socially conscious consumers and investors.

Shareholders, too, are raising their expectations. Many are now demanding robust governance structures that explicitly address harassment and we have seen a rise in shareholder class actions globally, including where corporate officers and directors have failed to address known sexual misconduct or stock prices have fallen following a sexual harassment scandal and misleading public statements.

For business leaders, this means that effective anti-harassment measures are increasingly viewed as a key component of good corporate governance. Steps businesses can take to assist with compliance (noting there may be more stringent local requirements) include:

- Implement robust monitoring and review mechanisms: Regular audits of policies, employee training, and investigation protocols are essential. These should be designed to work across borders while respecting local customs and legal requirements.
- Invest in education, training, and investigation protocols: As the nature of harassment claims evolves, so too must the skills of those tasked with investigating them. Training, codes of conduct, and written policies should be updated regularly to reflect current best practices and legal standards.
- Foster a speak-up culture: Encourage open communication about harassment issues across the organisation. Identify and promote reporting channels, including setting clear expectations for managers and incorporating anti-harassment metrics into performance evaluations.
- Conduct regular risk assessments: Use workplace questionnaires and other tools to identify potential problem areas before they escalate into legal issues.

Just the beginning...

This is just the beginning of sweeping proactive duties. With a new wave of transparency legislation across the EU, we expect to see ever greater compliance demands being imposed on companies.

Forward-thinking CEOs will not only mitigate legal risks but foster safer, more productive workplaces. In doing so, they'll position their companies at the forefront of a global movement towards more equitable and respectful work environments.

The message is clear: when it comes to harassment prevention, the best defence is a good offense. In today's world, that's not just good ethics – it's good business.