

SEX DISCRIMINATION

- Following a recent court ruling that the UK Employment Equality (Sex Discrimination) Regulations 2005 were not sufficiently robust enough to meet EU requirements, the Government has amended the law in so far as it relates to harassment at work. The changes will take effect from 6 April 2008.
- The changes will have particular implications for the hospitality industry as the Government's Commission for Equality and Human Rights has said that the changes are being introduced to deal with specific problems of harassment in the hotel and restaurant trade.
- Previously, the rules required employers to take steps to prevent sexual harassment by work colleagues. The amendments will now extend this to cover harassment by customers or other third parties.
- Under the new rules, it will be unlawful for employers to fail to take reasonable, practical steps to protect their workers from harassment by third parties where such harassment is known to have occurred on at least two other occasions. The 3 strikes approach relates to 3 incidents of harassment not necessarily the same customer each of the 3 times. Failure to act will see the company liable for unlimited compensation claims.

Practical Actions

- The burden of proof falls on the employer to demonstrate that they did not allow harassment to happen. Staff handbooks can be helpful to demonstrate a company ethos and culture and should explicitly refer to unacceptable conduct, comment or behaviour. Managers and supervisors should also be encouraged to step in to calm things down or deal with a potential situation. Although there is no requirement to do so, employers may also wish to display signs saying staff harassment will not be tolerated.
- The exact conduct constituting harassment is not specified and clearly will be determined on a case by case basis. What is offensive to one individual will not be an issue for another. The key issue under consideration should a court action be brought is the employers response when a complaint about harassment is brought to their attention.
- In order to protect the business, it will be important to ensure that all staff are made aware of the steps to be taken if they are unhappy about a customer's conduct or any specific incident. This should be specifically referred to in training and staff handbooks. Encouraging staff to report harassment means the company is aware of a potential issue and can deal with it. It also provides a due diligence defence should an individual pursue a complaint.
- The internal grievance procedure could be used, but at the very least staff should be encouraged to report any harassment or behaviour they find offence to their line manager. Incidents and any actions taken should be recorded. This could include the manager having a word with a customer, barring a particular culprit or moving the member of staff to other tasks.