

#MeToo movement

What steps should your business be taking?



Introduction

The #MeToo movement has shone an intense light on widespread and endemic sexual harassment globally and across a broad range of sectors.

The impact of the #MeToo movement on business includes reputational damage, falls in profit, increased legal claims as well as exposing toxic workplace cultures and its resulting effect on morale and attracting or retaining talent. Against this backdrop, we are starting to see businesses championing change and harnessing the power of being proactive in this area. With customers and clients also focusing on how to address these issues and increase diversity and inclusion in their own businesses, they are also expecting progress in how their supply chain proactively tackles these issues.



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What are the risks to your business?

In what has been heralded as a culture change, the #MeToo movement has increased awareness and willingness to stand up to previously unreported issues. This has resulted in increased risk of complaints, grievances and claims – in particular for businesses who do not proactively manage the associated risks. As a general trend, we are seeing increased willingness by the Employment Tribunals to find employers vicariously liable for the acts of their employees, by widening the net as to what action is deemed to be taken “in the course of employment”. We expect this approach to continue – in particular in areas such as harassment. One way businesses can successfully defend such liability is to demonstrate that “reasonable steps” have been taken to prevent the action in question.

The Government and Law Society are also taking steps to address these issues, including:

- introducing a mandatory duty to protect workers from sexual harassment;
- extending time limits for sexual harassment claims; and
- how these issues are addressed in employment contracts and settlement agreements to prevent “cover ups”.

Employees’ expectations are increasing with respect to the stance that business’ take on this topic, and generally on diversity and inclusion issues. Taking a proactive approach demonstrates that the business values the wellbeing of its workforce.



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What steps should you be taking and why Osborne Clarke?

Sexual harassment issues can be extremely damaging from a reputation perspective – whether legitimate or not – and require prompt and careful action. There are a number of proactive steps which we recommend to reduce the risks to your business.

What steps should you take?	Why Osborne Clarke?
<p>Workplace training: Comprehensive training for employees and managers (whether delivered separately or collectively) will engage and educate them on appropriate workplace conduct and their responsibilities and assist with preventing harassment and defending liability in the event of a claim.</p>	<p>Our training is practical, interactive and engaging. The training we provide is bespoke, preserving and enhancing your culture whilst still delivering a clear message on expected behaviour and managing risks.</p>
<p>Reviewing policies and practices: Effective workplace policies on these issues is another “reasonable step” for taking action and minimising. Policies should be regularly reviewed and effectively implemented to ensure they appropriately reflect the business’ position – as they are a key way to communicate to your workforce and also help to signpost how seriously the issue is taken in the event of a claim</p>	<p>We ensure that the policies we provide reflect your culture and are practical and reliable. We provide practical advice on how to communicate the policies to the workforce – creating a meaningful dialogue with your employees about a topic they care about.</p>
<p>Workplace investigations: In the event of harassment issues occurring or allegations being raised, prompt and careful action is required. This may include conducting an internal or external investigation and is another “reasonable step” to minimise risks and liability.</p> <p>We can advise you on the approach for a thorough workplace investigation and implementing appropriate outcomes. We can also train your internal HR team on how to conduct such investigations.</p>	<p>We use our significant experience of these matters to handle investigations sensitively and to arrive at a robust legally privileged investigation report you can rely upon.</p> <p>We can also use our experience to train your HR teams and to provide practical insight and assist with judgment calls along the way.</p> <p>We recognise the damage that these allegations can cause to the reputation of your business and are adept at working along side PR teams to effectively manage the potential reputational risks.</p>
<p>Settlement agreements: Given the Government’s current consultation and Law Society guidance it would be prudent to review the confidentiality provisions in both employment contracts and settlement agreements.</p>	<p>We can provide clauses which are compliant with the guidance and avoid attacks on your business’ reputation whilst still protecting your legitimate confidentiality interests.</p>



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- Delivering workplace training to multiple offices of a leading advertising agency, which required training delivered to a dynamic workforce in an engaging and fun way whilst still providing a serious message. The level of engagement was extremely high and resulted in glowing feedback from the management and HR team.
- Reviewing a global "one-size-fits all" handbook and effectively tailoring it to UK law and also project managing reviews in several other jurisdictions to ensure a consistent style and message grounded in local laws.

- Advising a US life sciences company on sexual harassment claims brought by a former contractor and providing full support throughout the investigation process whilst managing various stakeholders and ensuring commercial priorities were met.
- Advising a leading radio broadcaster on allegations of male on male harassment resulting which required us to advise on the external investigation provide strategic advice to the Board and work with the public relations team to manage the cultural and reputational risks to the business.

Examples of how we have assisted clients



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About Osborne Clarke

Osborne Clarke in numbers

900+

talented lawyers

working with

270+

expert Partners

in

26

international locations*

advising across

8

core sectors

with

1

client-centric culture

Our locations around the world

Europe

Belgium: Brussels

France: Paris

Germany: Berlin, Cologne, Hamburg, Munich

Italy: Brescia, Busto Arsizio, Milan, Rome

The Netherlands: Amsterdam

Spain: Barcelona, Madrid, Zaragoza

UK: Bristol, London, Reading

USA

New York, San Francisco, Silicon Valley

Asia

China: Shanghai

Hong Kong

India*: Bangalore, Mumbai, New Delhi

Singapore

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