

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Work

Chapter 1: Employment, etc.

Section 40: Employees and applicants: harassment

Effect

145. This section makes it unlawful for an employer to harass employees and people applying for employment. It also makes the employer liable for harassment of its employees by third parties, such as customers or clients, over whom the employer does not have direct control. Liability in relation to third party harassment will however only arise when harassment has occurred on at least two previous occasions, the employer is aware that it has taken place, and has not taken reasonable steps to prevent it happening again.

Background

146. This section is designed to replicate the effect of provisions in the Sex Discrimination Act 1975 as regards harassment by employers, and extend to the other protected characteristics (apart from marriage and civil partnership and pregnancy and maternity) the position in relation to employer liability for sex harassment under that Act.

Example

- A shop assistant with a strong Nigerian accent tells her manager that she is upset and humiliated by a customer who regularly uses the shop and each time makes derogatory remarks about Africans in her hearing. If her manager does nothing to try to stop it happening again, he would be liable for racial harassment.