

# The Ethical Workplace

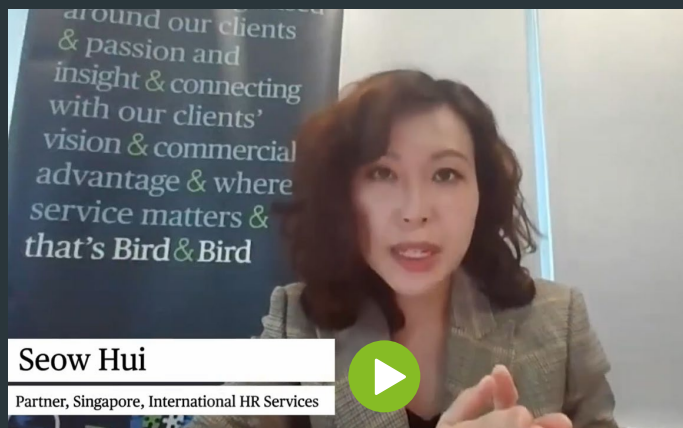
*& the Law in Practice*

## Harassment and how employers can really influence behaviour

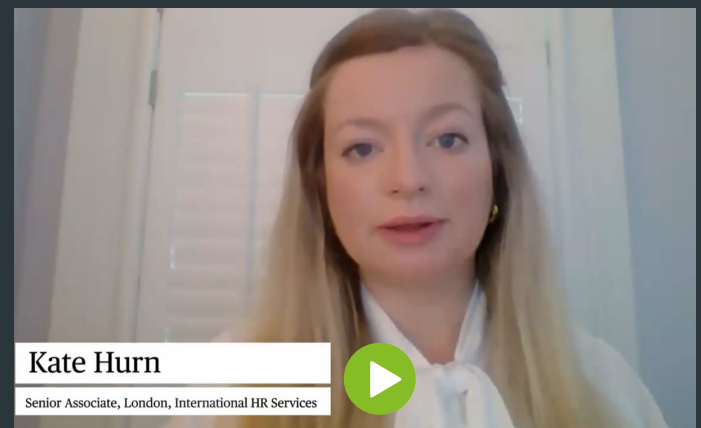
In 2017 there was a paradigm shift as (predominantly) women started speaking out about their experience of sexual harassment in the workplace. The #MeToo movement gained traction in Hollywood and the movie industry before spreading globally, with victims of harassment speaking out on social media about incidents and attitudes in workplaces across all sectors. In this instalment of our Ethical Workplace series, we are looking at how the legal landscape has changed globally to address these issues, whether employers have adapted their approach to dealing with workplace harassment and what further proactive steps can be taken.

### Are any trends emerging with respect to sexual harassment in the workplace in light of the #MeToo movement?

Whilst it is difficult to point to global trends, we are seeing more of a “speak up” culture and a widespread social media response in many countries. This does not necessarily translate into higher numbers of tribunal claims in every country but there is certainly an increased focus across the world on how employers respond to allegations of sexual harassment in the workplace due to the increased scrutiny and potential adverse publicity of getting it wrong.



### How is the law keeping pace with these social changes?



  
**6 out of 10 women experience sexual harassment in the workplace**

Source: October 2018 Ifop study for the Jean Jaurès Foundation and FEPS

## How can employers prevent sexual harassment and influence employees' behaviour?

There are various common barriers that discourage victims from reporting sexual harassment in the workplace, including fear of retribution, being put off by the employers' historical handling of similar complaints, as well as cultural barriers.

In this video we look at some of these barriers and ask how can employers attempt to influence behaviour to increase workers' confidence in reporting issues whilst simultaneously working to prevent the problematic behaviour in the first place?



## What methods can employers adopt to change behaviour and encourage reporting?

In order to tackle the reluctance to report sexual harassment in the workplace, some employers are adopting alternative approaches. For example, **external reporting lines and technology solutions** can offer employees greater freedom over how they report their experiences, choice about whether to retain their anonymity and the opportunity to act collectively with other victims of workplace sexual harassment. Mobile apps which use **blockchain technology** can allow victims to create private, encrypted and time-stamped online records of sexual harassment incidents, which can then be submitted if and when the user wishes. The ability to record immutable and contemporaneous accounts of sexual harassment may go some way in tackling the perception that victims' accounts of their experience are lost or distorted during the grievance procedure, which is one of the commonly cited obstacles to reporting. Alternatively, there are apps which use a combination of machine-learning and industry standard interviewing techniques, designed to create a less inhibitive reporting environment and elicit more detailed information than may be gathered during a face-to-face HR interview.

These developments are undoubtedly encouraging but employers must also take action to prevent the behaviour in the first place.

Whilst many employers have provided anti-harassment training for a number of years, this does not necessarily correlate with any decrease in the number of incidents of workplace

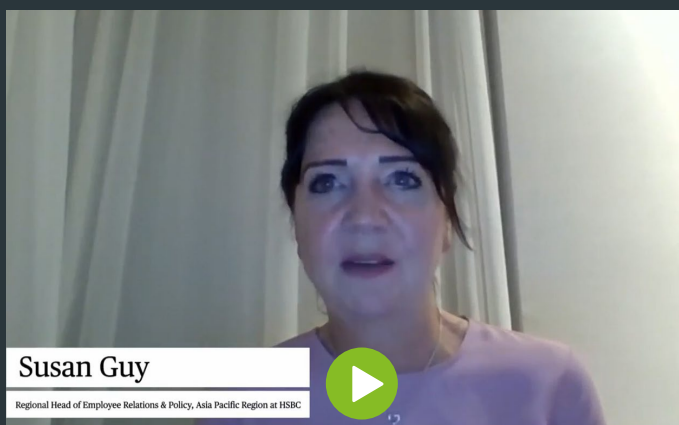
sexual harassment. Traditionally, such training has focused on the definition of harassment and identifying unacceptable behaviour. Research suggests that such sessions make little impact on long-term attitudes, can lead to defensive behaviour from employees who consider themselves the intended "target" of the training and may actually reinforce pre-existing gender biases.

One change we are seeing is the increased use of **active bystander training** globally. The idea is to teach colleagues how and when to intervene if they witness problematic behaviour. The focus is on creating shared values that everyone – as part of the workplace community – should enforce and thereby actually change behaviour by reinforcing the message that certain behaviours are unacceptable. It is also important that managers receive training, so that they are empowered to identify and deal with problematic conduct and – crucially – model acceptable behaviour themselves in order to foster this community approach.

Can active bystander training still be effective in a remote workplace? As employees tend to be less observed whilst working from home and there may be more 1:1 online meetings, employers should consider how these principles can be adapted to ensure that colleagues feel able to intervene in the digital workplace as well. We consider below the challenges that employers may face when working to prevent sexual harassment with increased numbers of employees working from home.

## Spotlight on employer action

In this video Susan Guy, Regional Head of Employee Relations & Policy, Asia Pacific at HSBC, gives us an insight into steps taken to effect change in practice.



**2 in 5 workers in Singapore have been sexually harassed at the workplace in the past five years**

Source: November 2020 AWARE-Ipsos survey

## Covid-19 and beyond: how is increased remote working affecting sexual harassment in the workplace?

Whilst remote working has been increasing in recent years, the Covid-19 pandemic has forced a sudden and seismic shift. Since March 2020, many employees around the world have been forced to work from home in order to comply with national legislation and their employers' response to the crisis.

Many employees will start to return to their offices once they are permitted to do so. However, it is widely expected that many employers will move to a hybrid working model, balancing the needs of the business in having employees in the office or on site, whilst also allowing employees to work from home for at least some of the time.

Harassment at work still takes place, even though the "workplace" has become dispersed in recent months with so many employees working from their homes.

Technology brings colleagues together on video calls, WhatsApp group chats and online instant messaging, but it also creates new opportunities for harassment to take place. Together with the increased conflation of employees' work and home lives, this has led to changes in the way that harassment at work takes place.

For instance, the increased use of video calls during the pandemic means that employees are often letting colleagues and clients into their homes which may increase the likelihood of inappropriate comments or feelings of discomfort and vulnerability. This also poses an additional challenge for employers as they may have less oversight of employees' behaviour as employee interaction is much more likely to occur in a 1:1 online setting, rather than a populated office space.

A recent poll conducted by the UK charity Rights of Women found almost **half of women** being subjected to **sexual harassment** in the workplace now say it is taking place **remotely**



## What should employers be doing to tackle sexual harassment in the remote workplace?

Employers need to be alive to these changes so that they can reduce the risk of harassment happening and take swift action if it does. For example:

- The rapid acceleration towards remote working and the adaptation of sexual harassment to this new working environment may mean that employers' existing policies and procedures need to be updated to cover both the office and the remote workplace.
- Anti-harassment training should specifically cover problematic remote working scenarios.
- Consider any ways in which remote working may create a barrier to reporting incidents - take steps to reduce the risk of employees feeling detached and isolated and ensure that employees know what resources are available to help.
- If allegations are reported, ensure that investigation takes place promptly and consider any ways that remote working may affect your usual procedures. This will allow you to anticipate any issues and avoid delay. For example, if investigation meetings are taking place online and you are concerned about your lack of control over this setting (e.g. concerns about covert recordings or other people attending), consider whether your software can mitigate such risk and amend your policies to clearly set out the company's position and manage expectations.

Whilst these issues are particularly pertinent at the moment, it seems that Covid-19 may have shifted us permanently towards a new way of working. These challenges are therefore likely to become a new feature of the workplace and so waiting for employees to return to the office and taking no action to safeguard remote workers from harassment at work is not an option.



**Across Europe**, women aged **18–25** are **3x** more likely to **report sexual harassment** than their older colleagues



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