

Workplace discrimination and harassment

Training and policies must be of high quality and up to date to protect franchisors and their franchisees as employers for their workforce, Kate Matthews of Boddy Matthews Solicitors says

Women often feel uncomfortable in the workplace, often enduring direct or indirect discrimination and harassment.

A good, ethical franchise model offers an excellent opportunity to showcase the brand's equality and diversity, which is so essential to achieve a balance in the modern workplace. However, training and policies must be of high quality and up to date to protect franchisors and their franchisees as employers for their workforce.

Workplace discrimination and harassment instances are distressing to all concerned. Sadly, they are more often perceived to affect women rather than men.

This can have serious implications on employment relations and employees' well-being and result in employment tribunal claims that can devastate franchise networks or their culture.

More often than not, while a claim is brought against the employer (being the franchisor or franchisee company), the employer is not the perpetrator of the conduct in question.

Rather, the act complained of is likely to have been committed by a colleague or manager of the complainant. The franchisor or franchisee will be treated as vicariously responsible for the wrongdoing because it employs the perpetrator and, broadly speaking, the act took place at work.

REASONABLE STEPS DEFENCE

In recognition of potential unfairness to employers, English legislation provides for a 'reasonable steps' defence. This is available to employers to seek to avoid liability if they can show they have taken all reasonable steps to prevent the objectionable act or acts of that kind.

But what must employer franchisors or franchisees do to benefit from the defence?

As a first step, employers ought to have equality policies and procedures in place, supported by suitable training for all staff. A good franchise will have these.

However, good policies and procedures are only the start. In 2021 following recent case law, an employment tribunal will now need to consider not only what the employer has done but, crucially, what more it could have done if there is to be no liability.



At a Glance BODDY MATTHEWS SOLICITORS

Kate Matthews is a founding partner with Helen Boddy of Boddy Matthews Solicitors. Kate is delighted to be an Encouraging Women into Franchising Awards finalist 2021 in two categories: Ambassador of the Year and Service Provider of the Year.

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Where more could be done, the defence will not be made out, even if the additional steps would not have prevented the harassment or discrimination from occurring. This will be good news to those subject to demeaning behaviour or discrimination.

In assessing the additional steps employers may have to take to ensure against harassment and discrimination, a tribunal will take into account the size and resources of the employer, the cost of the additional steps, their potential effectiveness and the practicability of providing them.

If, having looked at these issues, the tribunal concludes that there were further steps the employer should have reasonably taken the defence will fail.

IMPORTANT MESSAGE

The case sends an important message to employers about the nature and extent of the commitment they must have and display to preventing workplace discrimination and harassment.

As with all good franchise models, franchisor and franchisee employers are advised to adopt and regularly review their policies and training. In addition to regular and periodic assessment of the steps taken to prevent discrimination, where discrimination or harassment is observed or becomes known, the policies and training must be reviewed, adapted and refreshed.

This is very much a step in the right direction to provide a structured platform and give a voice for those experiencing issues in any form of employment.

