

Blowing kisses, not boundaries

Tribunal clears air on workplace etiquette.

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An Employment Tribunal case has sparked debate about the boundaries of workplace harassment, with a male manager's attempt to 'air kiss' a female colleague raising questions about what constitutes inappropriate or unwanted conduct at work.



The case involved a female employee, Jing Jing Chen, employed at the whiskey bar [Cut Your Wolf Loose](#) in Brighton. She claimed that in 2021, her male manager had hugged her and then leaned in to kiss her on the cheek without her consent during a workplace conversation, saying that the incident made her feel uncomfortable and was sexual harassment.

The [Equality Act 2010](#) defines sexual harassment as unwanted conduct of a sexual nature that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating, or offensive environment. Crucially, the behaviour must be unwelcome, and its impact on the recipient must be assessed objectively and subjectively.

Her manager, Paul de Newtown, said he only gave her an 'air kiss' – defined by the Collins dictionary as "a kissing gesture, especially one directed towards a person's cheek, made without making physical contact".

The tribunal concluded that de Newtown's action, while unwelcome, was not inherently sexual. It also considered the context, the intent behind the behaviour, and the employee's reaction at the time before deciding that the manager's behaviour did not meet the threshold defined by the Equality Act 2010. In this context, the "air kiss" did not constitute sexual harassment.

[Karen Cole](#), Partner and Head of Employment at West End Solicitors RIAA Barker Gillette (UK), explained:

"This ruling does not diminish the responsibility of employers to maintain a safe and respectful workplace,

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but rather an illustration of the fine line that can divide harmless social gestures and conduct that crosses professional boundaries.

While not every unwelcome action constitutes harassment under the Equality Act, employees have the right to feel respected and safe in their workplace. Employers must foster a workplace culture that encourages open communication and be active in addressing concerns early to help avoid misunderstandings or worse.”

Key takeaways for employers include:

- **Context Matters:** The tribunal emphasised the importance of considering the context and intent of the behaviour. Employers should ensure that workplace training includes guidance on understanding boundaries and recognising inappropriate behaviour.
- **Clear Policies:** Employers must have clear policies on workplace behaviour and harassment, including examples of unacceptable conduct. These policies should also outline procedures for addressing complaints.
- **Cultural Sensitivity:** Actions that seem harmless to one person could be unwelcome or offensive to another, particularly across different cultures and backgrounds. Creating an inclusive workplace culture requires ongoing education and awareness.
- **Prompt Action:** Employers should take all complaints seriously and conduct thorough investigations to determine whether conduct breaches workplace standards or the law.

The Equality and Human Rights Commission (<https://www.equalityhumanrights.com/>) offers useful resources, including guidance on the Equality Act and inclusive workplaces.

Ensure your workplace harassment policies align with the latest legal guidance. Contact [Karen Cole](#) at RIAA Barker Gillette (UK) for expert advice on fostering a respectful work environment.

Note: This article is not legal advice; it provides information of general interest about current legal issues.

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