



Sexual Harassment

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FACTSHEET – Sexual Harassment

What is sexual harassment?

Sexual harassment is unwanted conduct of a sexual nature, in a workplace, or other professional or social situation, involving the making of unwanted sexual advances or obscene remarks. It has the purpose or effect of violating the dignity of a worker, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them

Sexual harassment is unlawful under the Equality Act 2010.

All workers are protected from sexual harassment in the workplace. This applies to one-off incidents and ongoing incidents. This protection comes from both employment law and criminal law, depending on the circumstances. Anti-sexual harassment policies are vital

When deciding what is 'sexual harassment' it's important to remember that it is the effect of the behaviour on the recipient that counts – and not how it appears to another person. Something can still be considered sexual harassment even if the alleged harasser didn't mean it to be. It also doesn't have to be intentionally directed at a specific person.

Sexual harassment is not always obvious. Sexual harassment can also be more subtle, as when considering sexism.

An individual can experience unwanted conduct from someone of the same or different sex. Unwanted conduct does not need to be directed at a person. It can be witnessed or overhead.

If unwanted conduct is intended to violate a person's dignity or create an offensive environment, it doesn't matter whether it has that effect on the person. If unwanted conduct is not intended to cause distress, it can still have the effect of violating a person's dignity or creating an offensive environment.

All employers should make clear to workers what sort of behaviour would be considered sexual harassment and that it is unacceptable, ideally with a zero-tolerance policy.



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Criminal behaviour

There can be an overlap between behaviour that constitutes sexual harassment and criminal offences, including sexual assault, indecent exposure, stalking and offensive communications. There is a basic difference in the level of proof needed in criminal and employment law. One is beyond reasonable doubt and the other is having a reasonable belief. Some types of sexual harassment, such as sexual assault and other physical threats, are a criminal matter as well as an employment matter.

If you believe a criminal offence may have been committed, you should advise the person making the allegations to report the matter to the police as soon as possible and give them appropriate support. If you believe there is an ongoing risk of serious harm to an individual, you should contact the police after informing the person making the allegations that you intend to do so.

If a complaint is reported to police, or criminal court proceedings are being pursued, then the internal investigation or action would be stopped, pending any outcome of the trial. However, the employer can contact the police to seek permission to proceed with an internal disciplinary action.

Dealing with a complaint

Sexual harassment can happen to anyone at any time, in any place. This includes the workplace. However, there are many things an employer and its workers can do to minimise the risk.

- Check if workplace policies address the situation.

Typically, workplace policies are found in the company policies, usually within the Equality & Diversity policy.

Historic allegations

Complaints of sexual harassment will usually only be considered at an employment tribunal if the claim is made within three months of when the incident is alleged to have taken place. Sometimes a complaint of sexual harassment will be reported much later than this. Even so, an employer should always take such a complaint very seriously.

They should handle things in a way that is sensitive and fair to the worker who has made the complaint, anybody who has witnessed it and anybody who is being accused of sexual harassment.



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Making a complaint

Any worker who feels they have been sexually harassed, or any worker who feels they have seen sexual harassment take place, can make a complaint.

The person making the complaint should check any policies their organisation might have on sexual harassment to see who they should make their complaint to. Many organisations will suggest complaints can be made by writing a grievance letter to appropriate supervisors or managers.

Employers' obligations

Employers have a legal, ethical, and employee relations obligation to thoroughly investigate the charges

If the owner of a business knew Sexual Harassment was happening and did not take reasonable steps to prevent it, they would be held vicariously liable and could face action being taken against them as they are responsible for their employees' actions.

Employers may also be liable for sexual harassment committed away from the workplace, especially where the harassment occurs at social occasions outside work, such as visiting client's premises, office functions and parties, training courses and conferences.

Employers could be vicariously liable for the actions of their employee. They would need to prove that they had a robust training system and records of this training to lodge a defence, but even this might not save them.

Sexual harassment can be also be perpetrated by non-employees including contractors, agency staff, clients or customers.

Remember, if a complaint does go to an employment tribunal, the employer's handling of the complaint will come under scrutiny.

Anti-harassment policy and the role of the line manager

There are no minimum requirements the employer can rely upon to demonstrate that they have taken reasonable steps to protect their workers, but all employers will be expected to have in place:

- A policy that is communicated to workers and is effectively implemented, monitored and reviewed
- An appropriate procedure for reporting harassment, protecting accusers and taking action if further harassment occurs.



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The role of a line manager

The role of line manager is particularly important in dealing with sexual harassment. It's their responsibility to ensure that sexual harassment does not happen in their area and they need to be alert to the kinds of behaviour that can be regarded as sexual harassment.

Line managers should not tolerate an environment where sexual 'banter' is common just because no one has complained. Line managers need to explain the organisation's "zero-tolerance" approach to sexual harassment to their staff. Each member of staff should have a copy of the policy and new staff need to be given one when they join the organisation. They also need to ensure that people understand that harassment is a disciplinary matter and that there is a disciplinary policy and procedure, and fully understand how to make a complaint.

The practicalities of handling sexual harassment in the workplace

Based on the available knowledge, the owners or manager should map out a plan that covers the important people and situations to investigate based on the initial complaint. Basically, they should plan the investigation.

If the situation becomes complex, you can take legal advice to ensure you are looking at the whole situation fairly, based on the evidence you have. Make sure the lawyer supports the direction you're taking.

Investigation: The employer's perspective

Legally, an employer will want to avoid any possibility or appearance that the employee's complaint was disregarded, so response should be immediate. The trust, morale, and fair treatment of employees are at stake. An employer's actions send powerful signals about what another employee can expect in similar circumstances.

The employer may want to consider reposting and reiterating your sexual harassment policies across your whole workplace. Let the circumstances guide your judgment.

The law and sexual harassment

Sexual harassment is unlawful under the Sex Discrimination Act. Lesbians and gay men are also protected, under the Employment Equality (Sexual Orientation) Regulations. An employee who experiences sexual harassment at work can take a case to an employment tribunal.



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An employment tribunal will consider the complainant's perception, the surrounding circumstances and whether the conduct could reasonably have the effect claimed.

The maximum award made in a sexual discrimination case topped £24,103 in 2018 in 2004. But there is no limit to awards, which depend on the facts of each case. Employers can defend a claim if they can show that they took reasonable steps to prevent the employee's behaviour. Employment tribunals will take into account whether an organisation took "reasonably practicable" steps to avoid discrimination when deciding if the employer was at fault.

Remember!

If you or your organisation aren't convinced that you need to deal with sexual harassment, then bear the following in mind:

- Most employees want to be treated with respect, and work in a pleasant atmosphere
- You will not attract and keep the best staff if word gets round that sexual harassment occurs in your workplace.
- It can cost about £4,000 to replace a member of staff
- Defending a claim takes time as well as money and does little for an employer's reputation.
- The stress involved in having to mount a detailed defence of your behaviour and actions, which will come under severe scrutiny, should not be underestimated.

Handling a complaint of sexual harassment

You can choose to deal with sexual harassment complaints through your existing grievance policy or through your anti-harassment policy. However, you should be aware that complaints of sexual harassment are often very sensitive and complex. Anybody dealing with sexual harassment complaints should receive specialist training.

Investigation: The accused perspective

An accusation of sexual harassment can be extremely emotional and distressing for the accused, and they should be afforded the same rights and fair treatment as the accuser. The reputation of the accused can also be irreparably damaged by unproven allegations of sexual misconduct.



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False accusations

False accusations of discrimination or sexual harassment within the workplace known as defamation in Scotland, and libel, and slander elsewhere, and also sometimes referred to as traducement or vilification, are defined as the communication of a false statement intended to harm the reputation of others.

A false accuser could face disciplinary action, possible dismissal and criminal proceeding against them. The falsely accused could take civil action against the other party for damages.