



Members' guide

Sexual harassment in the workplace



Contents

Introduction	1
<hr/>	
1 What is sexual harassment?	2
<hr/>	
2 What does the law say?	3
Equality Act claims	3
Other legal claims	5
Prospect legal assistance	5
<hr/>	
3 What you should do if you are being sexually harassed	6
<hr/>	
4 Making a complaint of sexual harassment	8
<hr/>	
5 Seeking union support	9
<hr/>	
6 More information and support	10
Prospect guides	10
External support	10

Introduction

Every employer has a duty of care to its staff to ensure that the workplace is a respectful environment. Sexual harassment is never acceptable and should never be tolerated. Organisations and employers that get that right from the start will have the foundations in place to address problems when they do occur. Challenging work cultures that allow sexual harassment requires clear action from the employer to stop unwanted behaviours when incidents are reported.

Women in all grades in male-dominated workplaces or organisations with hierarchical structures, like the military, are more likely to experience sexual harassment. Victims of sexual harassment, including witnesses, may suffer damage to their mental and physical health which can impact on their ability to engage with professional duties. The greater the perception of institutional tolerance, the greater the impact on individuals.

Prospect has an important role in helping to create respectful workplaces. We work

with employers to agree policies that set clear boundaries for appropriate workplace behaviours, and the appropriate procedures that should be taken when those standards are not met. We support and represent members at work when a case of sexual harassment is reported, and we create organisations that reflect the culture we want to see in the workplace.

This is intended to be a practical workplace guide, broken up into the following sections:

- What is sexual harassment?
- What does the law say?
- What you should do if you are sexually harassed
- Making a complaint of sexual harassment
- Seeking union support
- What resources are available

If you are being sexually harassed or working in a toxic work environment that makes you feel uncomfortable, the union is there to support you. This guide will help you to make it stop.

1. What is sexual harassment?

1.1 Sexual harassment is unwanted behaviour of a sexual nature. This can take many forms, including:

- Verbal abuse, sexist 'jokes', innuendo, patronising or inappropriate remarks.
- Comments about a person's body or appearance.
- Unwanted physical contact, physical threats or assault.
- Threatening language or behaviours.
- Leering, lewd gestures, pestering or spying.
- Circulation or display of pornographic material on any platform including social networks.
- Bullying that demeans or belittles someone in the workplace or at social events.

1.2 You may be the direct target, or you may work in a department where sexist attitudes make you feel uncomfortable. Whether the behaviour was intended or not, none of these behaviours are acceptable.

1.3 Sexual harassment is often considered largely in terms of unwanted sexual advances or sexual coercion, however most cases involve hostile sexist attitudes, with or without sexual advances.

1.4 If you recognise any of these behaviours then you have experienced sexual harassment. Workplaces that tolerate unwelcome attitudes of this type create an atmosphere that encourages sexual harassment. This fosters a hostile working environment that undermines people and can lead to serious incidents.

1.5 Our union believes in a zero-tolerance approach to all forms of sexist hostility in the workplace. We will not hesitate to call out organisations that do not take the steps needed to stamp out unacceptable behaviours.

2. What does the law say?

Equality Act claims

2.1 The Equality Act 2010 outlaws sexual harassment at work. While the Equality Act does not apply in Northern Ireland, the Sex Discrimination (Northern Ireland) Order 1976, provides identical provisions.

2.2 The Equality Act defines sexual harassment as being unwanted conduct related to sex, or of a sexual nature, which has the purpose or effect of:

- violating the other's dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment.

2.3 The definition of sexual harassment also expressly includes less favourable treatment because of rejection of, or submission to, unwanted conduct which is of a sexual nature or related to sex.

2.4 In deciding whether harassment has occurred, there does not need to be a deliberate attempt to harass. A tribunal must consider the perception of the person making the complaint but also whether it is reasonable for the conduct to be said to be offensive.

2.5 The employer is legally liable for actions by their employees that are carried out in the course of employment. This applies whether the harassment is done with the employer's knowledge or approval. This concept of vicarious liability means that a worker can bring a claim of harassment against an employer for actions carried out by other employees.

2.6 Harassment can occur in work-related events, such as parties, conferences or other social events. Where an event is organised by the employer or is closely related to work, the employer may be liable should any harassment occur.

2.7 An employer has a statutory defence to a claim if they can show they took all reasonable steps to prevent the harassment occurring. What is reasonable will depend on the size and resources of the employer but we would expect, at a minimum, that employers would have clear policies which are implemented and regularly reviewed; training for all staff including ensuring that staff are aware of the relevant policies; clear processes for raising complaints; ensuring that complaints are handled sensitively and effectively.

2.8 The legal protection for workers subjected to harassment by a third party, for example military personnel, a contractor or an external client, can be complicated. Although the Government repealed specific provisions against third party harassment, an employer may be liable for the actions of third parties, if they fail to take appropriate action to safeguard their workers, so advice should still be sought in these circumstances.

2.9 Women are often concerned about raising allegations of harassment because of a fear of victimisation.

2.10 Victimisation is when a person is treated unfavourably because of doing a "protected act". A protected act is:

- bringing proceedings under the Equality Act
- giving evidence or information in relation to the Act
- doing anything else under the Act
- alleging that someone has contravened the Act.

2.11 If an individual makes an allegation of harassment in good faith (or provides evidence in support of someone else who has raised allegations under the Act), and they are then subjected to any detriment (such as being isolated, moved to a different role or

given worse duties), they may be able to bring a claim of victimisation.

2.12 There are strict time limits for bringing a case to an Employment Tribunal. For most types of cases, including harassment and victimisation claims, the time limit is three months from the act complained of. This time limit can be extended but only in very exceptional circumstances, so it is important to ensure that advice is sought in good time and that a claim is lodged within the three month limitation period.

2.13 In all cases the employee should present a grievance in writing to the employer before making a tribunal claim. Failure to do so could result in a reduction of up to 25% of any compensation awarded. The grievance process does not affect the time limits for starting the tribunal process.

2.14 It is mandatory to present a claim to ACAS for Early Conciliation (EC) before making the claim to the Employment Tribunal. This must be done before the usual three month time limit expires. Once the EC application is submitted it has the effect of 'stopping the clock' for the tribunal claim. The rules are complicated so always contact your Prospect negotiator for detailed advice as soon as possible.

Other legal claims

2.15 Harassment is also outlawed by the Protection from Harassment Act 1997. Although this Act was introduced to deal with the problem of stalking, it may also apply to harassment in the workplace.

2.16 This Act covers harassment on any grounds and makes it both a civil and criminal offence. People who have been harassed can seek court orders to restrain the harasser and to claim damages but Prospect would caution that use of this legislation in the workplace is very limited and should only be considered if there is no other remedy. It would normally only apply when it can be shown that the harassment is severe and intentional.

2.17 A claim for personal injury may be able to be brought if it can be shown that the Claimant has been injured because of the employer's actions or failure to act. The Claimant would need to show that the employer's negligence caused the injury to health and that it was reasonably foreseeable that the injury would occur

Prospect legal assistance

2.18 Legal advice and assistance is offered at the union's discretion and is decided on the facts and merits of each case. See our **Guide to legal advice** (see link below) for details of our services and the terms and conditions for advice, or speak to your local rep or full-time official to find out how we can help and advise you.

3. What you should do if you are being sexually harassed

3.1 If you feel you are being sexually harassed at work you may be unsure how to stop the unwanted behaviour. Challenging someone at work can feel daunting especially if you are junior member of staff complaining about the actions of a senior work colleague. You may not be confident that your complaint will be taken seriously or that you can stop the harassment. You may have a direct experience of making a complaint before and it not being properly dealt with. But there are actions that you can take and support you can seek to stop the harassment.

3.2 Look for support from trusted friends and colleagues

Harassment is an upsetting experience to deal with. It can leave you feeling vulnerable and isolated. Seeking support from others is an important first step. By talking to someone else you are acknowledging that a problem exists, and it will help you to think through what actions you feel confident to take.

3.3 Tell your harasser to stop.

If you are feeling uncomfortable with someone's behaviour towards you ask the perpetrator to stop. You do not have to justify your complaint it is enough to state clearly what conduct you want to stop. You may want to talk to a line manager or a union rep before challenging a work colleague, it is not always feasible to directly confront your

harasser. Seeking support from others will help you to challenge the harasser.

3.4 Keep records

Recording incidents, dates, witnesses and any action you have taken will be useful if you decide to make formal complaint. Your notes can help you to reflect on the actions of others and identify any fellow staff members who are supportive.

3.5 Seek union advice

Talk to your local union rep, they are there to support you. If you are not sure who to contact in the union, contact our Member Contact Centre. They can help you understand your options and link you up with your full time official who can help you to decide what action to take.

3.6 Talk to your manager

Most workplaces have a formal policy on dealing with sexual harassment. Making your manager aware of the problem will activate this policy, which could lead to a resolution of the problem. If you are not comfortable making a complaint to your direct line manager, seek out other senior staff. Many HR departments have designated managers who deal with sexual harassment complaints, or there may be a confidential helpline at work.

3.7 Make a formal complaint

If you can't resolve the problem yourself, or the actions from management appear to be going nowhere you can raise the matter formally. It is a good idea to look up your employer's grievance procedures and any policies that deals directly with sexual harassment. Your union can support you through this process.

3.8 Serious sexual assault

If you've been sexually assaulted there are specialist helplines that you can call for support and advice. They can help talk through your options. If you choose to tell your employer, they should talk to you about whether you want to report the assault to the police. If you do not want to tell the police, you do not have to.

4. Making a complaint of sexual harassment

4.1 If you are being sexually harassed you may not be sure whether you want to make a formal complaint. Speak to your line manager who may be able to advise you on whether the matter could be resolved informally or dealt with as a formal complaint.

4.2 If the matter is not being dealt with to your satisfaction, or you feel that the harassment is too serious to be dealt with informally, you can make a formal complaint. Your employer may have specific policies and procedure for handling sexual harassment complaints. If so, you should follow that policy and procedure to make your complaint.

4.3 The policy should tell you who to send your complaint to and how it will be dealt with. Like any complaint a manager will be assigned to investigate when a complaint is made, so you should note down any relevant information about the harassment. You might also want to tell your union rep so they can support you in making a complaint.

4.4 If your complaint leads to a hearing, your employer must allow you to be accompanied at the hearing, if you make a reasonable request. This would usually be someone you work with or a trade union representative.

4.5 When the procedure has been completed the employer should decide on the outcome and any actions that need to be taken to resolve the complaint. Your employer needs to ensure that you are not victimised for making a complaint by taking steps to protect the person who's made a sexual harassment complaint, as well as other staff.

4.6 If you are not satisfied with the outcome, you may wish to appeal or take formal legal action. You will need support to guide you through this process. The union can offer advice and help you decide on the best course of action. It is important to note that there are strict time limits for submitting a legal claim (see above).

5. Seeking union support

5.1 Your union can play a valuable role in resolving a matter of sexual harassment. Local reps can often help guide you through the process and support you during a hearing. The union centrally provides expert legal advice, and our full time officers can pursue a claim against an employer up to an employment tribunal if the matter has not been properly dealt with.

5.2 The perpetrator of sexual harassment may be a member of the union and so may seek union representation if they are facing disciplinary action. Where the union does represent someone that is accused of sexual harassment the matter will be dealt with in a way that respects the confidentiality of all those involved and does not conflict with the rights of those seeking union support.

5.3 A harasser may not know, understand or be willing to accept that their actions are offensive. The union's role is to ensure that the procedures are followed and that if a complaint is upheld any disciplinary action taken is appropriate.

5.4 The union is sensitive to the fact that the accused may be better placed to seek greater support from the union. Full time officers will arrange appropriate representation for victims of harassment where union support is requested and ensure that confidential information is not inadvertently shared by representatives on different sides of the case.

6. More information and support

If you have been sexually harassed, call our Member Contact Centre on 0300 600 1878 or email info@prospect.org.uk

Prospect guides

- Prospect's workplace guide to dealing with sexual harassment
<https://library.prospect.org.uk/download/2018/01069>
- Prospect's guide to legal advice
<https://prospect.org.uk/article/guide-to-legal-advice>
- Members' guide on bullying and harassment in the workplace
<https://library.prospect.org.uk/download/2007/00549>
- Members' guide to the Equality Act
<https://library.prospect.org.uk/download/2008/00092>

External support

- Acas – What sexual harassment is
<https://www.acas.org.uk/sexual-harassment>

Women who've experienced sexual harassment at work can get free legal advice from:

- Rights of Women – England and Wales
<https://www.rightsofwomen.org.uk/sexual-harassment-at-work-advice>
- Scottish Women's Rights Centre
<https://www.scottishwomensrightscentre.org.uk/services-helpline/>



New Prospect House
8 Leake Street
London SE1 7NN
0300 600 1878
enquiries@prospect.org.uk

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