



Sexual harassment - advice for workers

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CONTENTS

1.0	Who is this guide for?	2
2.0	What is sexual harassment?	3
3.0	How must your business manage work health and safety risks?	4
4.0	What should you do if you see sexual harassment occurring?	5
5.0	What are your options if you're being sexually harassed?	6
	What can you do?	6
	What should happen when you report sexual harassment?	8
	How should your business deal with reports of sexual harassment?	9
	What should happen during a formal investigation?	10
6.0	What should you do if you're accused of sexually harassing someone?	11
7.0	Who can help?	12
8.0	Glossary	14



table

1	Duty holders under the Health and Safety at Work Act 2015	14
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figures

1	Examples of sexual harassment at work	3
2	Options if you're being sexually harassed	7
3	General principles for how businesses should deal with reports of sexual harassment	9
4	Where to find help	13

1.0

Who is this guide for?

Sexual harassment harms workers.

This guide is for workers, and provides advice on:

- what sexual harassment is
- how your business must manage its work health and safety risks
- what to do if you see sexual harassment occurring
- what your options are if you're being sexually harassed
- what to do if you're accused of sexually harassing someone
- who can help.

2.0

What is sexual harassment?

The Human Rights Act 1993 defines sexual harassment as any unwelcome or offensive sexual behaviour that is repeated, or is serious enough to have a harmful effect, or which contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment.¹

Examples of sexual harassment at work can be seen in Figure 1.



FIGURE 1: Examples of sexual harassment at work¹

Sexual harassment can happen at any time and at all levels of a business.

Sexual harassment can be spoken or written, visual or physical acts.

It can occur in person, through text messaging, or online through email, internet chat rooms or other social media channels.

There are certain factors that could mean workers are at greater risk from sexual harassment. These include:²

- businesses:
 - having low worker diversity (eg having a male-dominated workforce)
 - having many young workers
 - having power imbalances (eg between managers and workers, or customers and workers)
 - tolerating or encouraging alcohol consumption during or around work hours or at work functions
- workers:
 - doing isolated work
 - doing repetitive work.

¹ Sourced and adapted from the Human Rights Commission guidance *Sexual Harassment: What you need to know* www.hrc.co.nz/files/6814/9516/8571/46693-NZHRC-Dealing_with_Sexual_Harassment_Booklet_v6.pdf

² Adapted from the U.S. Equal Employment Opportunity Commission *Chart of Risk Factors for Harassment and Responsive Strategies* www.eeoc.gov/eeoc/task_force/harassment/risk-factors.cfm

3.0

How must your business manage work health and safety risks?

Your business³ must ensure, so far as is reasonably practicable, the health and safety of workers, and that other persons are not put at risk by its work.

Your business must, so far as is reasonably practicable, eliminate work risks. If a risk can't be eliminated, it must be minimised so far as is reasonably practicable.

Risks to health and safety arise from people being exposed to hazards (anything that can potentially cause harm such as sexual harassment).

As sexual harassment is a common and known source of harm, your business is expected to have processes in place to effectively deal with it.

Your business must engage with you or your representatives about how it's going to manage the health and safety risks from sexual harassment.

Your business could have in place:

- a code of conduct which describes expected behaviours and what misconduct and serious misconduct is
- training for workers about sexual harassment (eg what sexual harassment is, what to do if workers see or experience it)
- procedures to report sexual harassment and to deal with such reports
- appropriately trained sexual harassment contact people available to workers.

See WorkSafe's quick guide *Preventing and Responding to Sexual Harassment at Work - advice for businesses* for more examples of possible control measures.

While your business must effectively deal with sexual harassment, everyone at work has a role in stopping sexual harassment from occurring.

See Section 8 of this guide for an explanation of the health and safety duties of businesses, workers and others at workplaces.

³ In this guide 'business' means the person conducting a business or undertaking (PCBU). An undertaking is usually not-for-profit or non-commercial (eg council, school, charity). This guide covers businesses and other PCBU organisations. See Section 8 of this guide for more information about PCBUs and worker duties.

4.0

What should you do if you see sexual harassment occurring?

Bystanders (people that see sexual harassment occurring) can have an important role when dealing with sexual harassment.

Bystanders can be supportive towards the person being harassed. Bystanders should only speak up to help someone who is being sexually harassed when they feel safe to.

Bystanders can report the sexual harassment they see.

If there's an investigation they may be named and interviewed as a witness.

Bystanders should be offered support from the business, and be protected from being punished, bullied, or intimidated.

See Section 5 of this guide for information about reporting sexual harassment and support.

5.0

What are your options if you're being sexually harassed?

Remember to gather information

For each incident keep records of:

- how you felt
- the date, time and where it occurred
- what happened (who was present, what was said, who said what)
- if there were any witnesses.

What can you do?

When deciding what to do, remember:

- your business must manage the health and safety risks from sexual harassment
- you're legally protected from discrimination and dismissal for raising health and safety issues or concerns (adverse conduct)⁴
- your business can't help or support you unless it knows what's going on.

You could take one or more of the options outlined in Figure 2.

However, you could instead decide to first seek help from an outside organisation (eg the Police for physical assaults and criminal harassment).

You could also decide to raise a personal grievance under the Employment Relations Act 2000 with your employer first and then the Employment Relations Authority, or submit a complaint under the Human Rights Act 1993 with the Human Rights Commission.

Note: As the Employment Relations Act is only relevant for employer/employee relationship problems, independent contractors should direct their complaints to the Human Rights Commission.

See Section 7 of this guide for where to find help.

⁴ See WorkSafe's guidance *Introduction to Health and Safety at Work Act 2015* for further information about adverse conduct.

Seek advice and support

Talk with a trusted person (eg a friend) about what happened.

You could seek advice and support from others at your business such as a colleague, your manager, or if your business has them:

- a person who has been trained to advise/support their co-workers (sexual harassment contact person)
- the Human Resources team
- an employee assistance program (EAP).

You could seek advice and support from public sector agencies or other organisations (eg unions), helplines, counsellors, lawyers etc (see Section 7 of this guide).

You can have a support person present at interviews and meetings. To avoid conflicts of interest, the same support person should not support you and the other person involved.

Deal with it yourself

This means approaching the other person(s) involved to challenge their behaviour and talk about your concerns. You could have a support person with you when you do this.

But you don't need to do this - only do it if you feel safe and comfortable to do so.

Report the behaviour to your business

Your business should have processes for reporting sexual harassment.⁵

It should talk to everyone involved, consider the information provided and then decide what to do next (taking into account the seriousness of the issue and your views).

Depending on the circumstances, options for the business include:

- reminding the other person involved about expected behaviours, misconduct and serious misconduct
- talking to other person involved about the reported behaviour
- proposing mediation takes place - but only if this is appropriate and both parties agree (see below)
- undertaking a formal investigation.

FIGURE 2: Options if you're being sexually harassed

Mediation can be useful to restore relationships (if this is appropriate), or to agree guidelines to ensure a safe working environment.

Mediation involves a trained and impartial mediator sitting with all parties concerned to try to get an agreement and a way forward.

Mediation can be used early on in the situation or at other times (eg after an investigation). But in some circumstances, mediation may not be appropriate.

It's important that mediation creates a safe and constructive environment **and both parties have freely agreed to take part in mediation.**

Mediation can happen by a face-to-face meeting or by other means such as the mediator acting as a go-between if you don't feel safe to sit in the same room with the other party (shuttle mediation).

Mediation can be run in-house or an external mediator used.

The public sector agencies that provide mediation are:

- The Ministry of Business, Innovation and Employment (MBIE's) Employment Mediation Services
 - provide a free mediation service to any employer or employee and can help parties resolve an employment relationship problem. Visit: www.employment.govt.nz/resolving-problems/steps-to-resolve/mediation/request-mediation
- The Human Rights Commission - provides a free, confidential and impartial mediation process for complaints of sexual harassment and other forms of alleged unlawful discrimination.
Phone: 0800 496 877
Email: Infoline@hrc.co.nz
Visit: www.hrc.co.nz

⁵ If your business doesn't have a sexual harassment reporting form to fill out, go to the WorkSafe website: worksafe.govt.nz for one you can use.

What should happen when you report sexual harassment?

When you report sexual harassment, your business should:

- make sure both you and the other person involved are supported (see Figure 2 for options) as soon as possible
- take reasonable steps to protect you from reprisals (eg protect you from being punished, bullied or intimidated because you made the report)
- tell you what interim measures will be taken to ensure your safety and welfare.

Interim measures could include:

- being reassigned to other duties or relocated to another part of the business until the investigation is complete
 - you or the other person involved taking a voluntary leave of absence until any investigation is complete
 - depending on the circumstances the other person being suspended pending the outcome of any investigation.
- give guidance about how to respond to the other person involved if you remain in day-to-day contact
 - seek your view about what approach it will take (see Figure 2), and then as soon as possible tell you what will happen next.

What role can Health and Safety Representatives (HSRs) have in dealing with sexual harassment?

HSRs can help their business to develop its sexual harassment policies and procedures, and advise workers on them.

For workers who experience or see sexual harassment, HSRs can:

- help to report sexual harassment – including by telling you how to make a report or submitting a report on your behalf (with your permission).
- if they have the **appropriate training**, act as a support person – but to avoid conflicts of interest, the same HSR shouldn't support both sides of a complaint.

How should your business deal with reports of sexual harassment?

Figure 3 outlines the principles your business should consider when dealing with reports of sexual harassment.

These are based in part on the principles of natural justice. Natural justice applies to both parties to a complaint.

General principles for dealing with reports of sexual harassment

Take all reports of sexual harassment seriously

Act promptly

- Set timelines and deal with reports as soon as you can after you receive them.
- Carefully and clearly consider response options for the specific circumstance.

Clearly communicate the process

- Tell everyone involved what the process is.
- Let the people involved know if there are delays to timelines.

Protect the people involved

- Protect all the people involved (including both sides of the complaint, support people and witnesses) from victimisation (eg being punished, bullied, intimidated).

Support the people involved

- Anyone involved can have a support person present at interviews or meetings (eg in-house support person, their union delegate, colleague, friend, legal representative).
- Tell everyone involved what support and representation is available to them (eg do you have an employee assistance programme, or other trained people who can provide ongoing care and support?).

Maintain confidentiality

- Ensure details of the matter are only known to those directly concerned (including their representative or support person) and those involved in investigating and considering the reported behaviour.

Treat everyone involved fairly

- Get someone unbiased and trained to look into the report of sexual harassment.
- Make decisions based on the facts.
- Clearly tell the people involved what you are going to do (taking into account privacy).

Keep good documentation

- Ensure actions and decisions are documented.
- Store all information securely and where access is restricted.

FIGURE 3: General principles for how businesses should deal with reports of sexual harassment

What should happen during a formal investigation?

You should be consulted about the terms of reference for the investigation.

A **terms of reference document** describes how the investigation will be run. It should include:

- the purpose and scope of the investigation (what's in and what's out)
- details about the reported sexual harassment
- what process will be followed
- what the investigation report will contain
- who the manager responsible is, and who the contact person for the investigator is
- who the decision maker will be, and the possible outcomes.

For more information, visit: www.employment.govt.nz/resolving-problems/steps-to-resolve/disciplinary-action/investigation

Investigations should ideally be carried out by someone who is trained to carry out investigations into sexual harassment complaints and is unbiased/not involved in the incident.

The investigator will interview all parties involved and any witnesses, and review any relevant documentation to determine the facts. They will provide a written investigation report on their findings to your business.

You should receive a copy of the report.

Your business should meet separately with you and the other person involved to discuss the investigation report and the actions it proposes to take (if the complaint is upheld). It should seek your views about this.

The final decision should then be reported back to you. After this, the business should regularly follow up with you and check your wellbeing.

You should be told what you can do if you're unhappy with the outcome. You could decide seek external help (see Section 7 of this guide).

6.0

What should you do if you're accused of sexually harassing someone?

If you are accused of sexual harassment, you should take this seriously.

You should be told as soon as possible if a complaint has been made about you and what the allegations are.

If you receive a complaint directly, let your business know as soon as possible.

You could become the subject of a formal investigation if the complaint is considered serious enough and is not frivolous or vexatious.

See Section 5 of this guide for information about investigations.

You should be told about:

- the details of the complaint and who made it (eg details of the allegations, including a written copy of the complaint and any investigation material)
- the process and your rights (including the right to have a support person present at any meeting to discuss the matter/the right to a legal representative)
- keeping the details of the complaint confidential to those directly concerned
- the possible consequences (eg if it's a formal employment investigation that could result in dismissal)
- expectations of your behaviour (to remain professional, to not punish, bully, intimidate etc any of the people involved in the complaint)
- the terms of reference if a formal investigation occurs (see Section 5 of this guide)
- the interim measures that will be taken to ensure the safety and welfare of the person who made the complaint during any investigation.

Interim measures could include:

- being reassigned to other duties or relocated to another part of the business until the investigation is complete
- taking a voluntary leave of absence until any investigation is complete
- depending on the circumstances, being suspended pending the outcome of any investigation.

You should consider what has been said, and how the person making the complaint might be feeling/thinking.

You can seek advice and support from others (see Figure 2). To avoid conflicts of interest, the same support person should not support both sides of a complaint.

7.0

Who can help?

You may decide to seek external help and advice as a first step (eg physical assault and criminal harassment should be dealt with by the Police).

You may also decide to seek external help if you're not satisfied by the actions of your business, and have made reasonable efforts to try to resolve the issue using internal processes.

Figure 4 outlines the public sector agencies and other organisations that can help.

For example:

- The Human Rights Commission can help resolve complaints of sexual harassment and other forms of unlawful discrimination at work, at school, by people providing public services and other areas.
- MBIE's Employment Mediation Services is a free and confidential service to help employers or employees resolve employment relationship problems including sexual harassment allegations.
- The Employment Relations Authority can resolve disputes about employment issues including sexual harassment if mediation has failed to resolve your complaint.

When deciding which organisation to seek help from, consider:

- the nature of your relationship (eg employer and employee, contractor or something else) - the Employment Relations Act 2000 is only relevant for employer/employee relationship problems
- the expected timeframes for resolving issues⁶
- confidentiality - there's no confidentiality once a decision of the Human Rights Review Tribunal or Employment Relations Authority is published
- whether a personal grievance has been formally raised with your employer and the process commenced in the Employment Relations Authority - if it has, a complaint can't be submitted to the Human Rights Commission.

⁶ For this information, contact the relevant organisation.

The **Human Rights Commission** can help resolve complaints of sexual harassment and other forms of unlawful discrimination at work, at school, by people providing public services and other areas.

It provides a free confidential mediation process for complaints of sexual harassment.

It can provide information to help you to resolve your complaint or you could be referred to a mediator. Mediators help both parties work through the issues raised in a complaint.

If mediation is unsuccessful, the **Human Rights Review Tribunal** can deal with human rights complaints (legal action).

Phone 0800 496 877
Email: Infoline@hrc.co.nz or
Visit: www.hrc.co.nz

Legislation: The Human Rights Act 1993 (HRA).

WorkSafe New Zealand is the primary work health and safety regulator – although Maritime New Zealand and the Civil Aviation Authority also carry out certain health and safety functions for their industries.

Phone 0800 030 040 (24 hours).

To raise health and safety concerns go to: worksafe.govt.nz/notifications/health-or-safety-concern

Not all concerns and notifications will meet WorkSafe's threshold for initiating a response.

Legislation: The Health and Safety at Work Act 2015 (HSWA). HSWA is the primary work health and safety legislation.

MBIE's Employment Mediation Services provides a free mediation service to any employer or employee and can help parties resolve an employment relationship problem.

Phone 0800 20 90 20 or
Visit: www.employment.govt.nz/resolving-problems/steps-to-resolve/mediation

If mediation is unsuccessful, the **Employment Relations Authority** can resolve disputes about a range of employment issues including sexual harassment.
Visit: www.era.govt.nz

Like the Employment Relations Authority, the **Employment Court** deals with cases about employment disputes. The Employment Court also deals with challenges to Employment Relations Authority decisions. Visit: www.employmentcourt.govt.nz

Legislation: Employment Relations Act 2000 (ERA). The ERA aims to build productive employment (employer/employee) relationships. It provides protection against sexual and racial harassment, which are also covered by the HRA. So sexual and racial harassment can give grounds for a personal grievance under the ERA or a claim under the HRA – the employee decides which of these options to take.

The **New Zealand Police** should be contacted about acts of violence and criminal offences.

Phone 111.

Criminal charges can be filed by the Police.

Legislation: Crimes Act 1961 and other legislation administered by the New Zealand Police.

NetSafe is New Zealand's online safety organisation.

It assists with complaints about harmful digital communications.

For information about what to do about online harassment:
Phone: 0508 638 723 or
Visit: www.netsafe.org.nz

Legislation: The Harmful Digital Communications Act 2015 (HDCA). The HDCA aims to provide a quick, efficient and relatively cheap legal avenue for people dealing with serious or repeated harmful digital communications (eg threatening or offensive emails, texts or posts in comment sections, chat rooms or social media).

Advice and support can be found from other places such as:

- Safe to Talk He pai ki te korero 0800 044 334
<https://safetotalk.nz>
- sexual abuse support organisations (eg Rape Crisis)
- other helplines such as Lifeline 0800 543 354, Samaritans 0800 726 666 and Healthline 0800 611 116 (for more information see: www.mentalhealth.org.nz/get-help/in-crisis/helplines).
- employee assistance programs (EAP) (if available at your business)
- unions (eg by approaching your union delegate, organiser or the union's support centre): www.union.org.nz
- relevant industry and professional organisations
- Employment New Zealand: <http://employment.govt.nz>
- community law centres: <http://communitylaw.org.nz>
- the Citizens Advice Bureau: www.cab.org.nz/Pages/home.aspx

FIGURE 4:
Where to find help

8.0

Glossary

Glossary

DUTY HOLDER	EXPLANATION AND DUTIES UNDER THE HEALTH AND SAFETY AT WORK ACT (HSWA)
<p>Persons conducting a business or undertaking (PCBUs)</p> <p>Called 'business' in this guide</p>	<p>A PCBU is a 'person conducting a business or undertaking'.</p> <p>A PCBU may be an individual person or an organisation. This does not include workers or officers of PCBUs (to the extent they are solely workers or officers), volunteer associations (that do not have employees), or home occupiers that employ or engage a tradesperson to carry out residential work.</p> <p>A PCBU must ensure, so far as is reasonably practicable, the health and safety of workers, and that other persons are not put at risk by its work.</p> <p>See WorkSafe's website: worksafe.govt.nz for information about specific PCBU duties.</p>
<p>Workers</p>	<p>A worker is an individual who carries out work in any capacity for a PCBU. A worker may be an employee, a contractor or sub-contractor, an employee of a contractor or sub-contractor, an employee of a labour hire company, an outworker (including a homeworker), an apprentice or a trainee, a person gaining work experience or on a work trial, or a volunteer worker. It also includes an individual PCBU that carries out work for the business or undertaking.</p> <p>Workers can be at any level (eg managers are workers too).</p> <p>Workers have duties to take reasonable care for their own health and safety and to take reasonable care that they don't harm others while at work.</p> <p>Workers must co-operate with reasonable policies and procedures about sexual harassment the PCBU has in place that have been notified to them.</p> <p>Workers must comply, so far as is reasonably practicable, with any reasonable instruction about sexual harassment given by the PCBU so the PCBU can comply with the law.</p> <p>Workers should report sexual harassment they experience or see so their PCBUs can do something about it.</p>
<p>Other persons at workplaces such as visitors</p>	<p>Examples of other persons at workplaces include workplace visitors, casual volunteers at workplaces and customers.</p> <p>Other persons have duties to take reasonable care for their own health and safety and to take reasonable care that they don't harm others at a workplace.</p> <p>They must comply, so far as is reasonably practicable, with any reasonable instruction about sexual harassment given by the PCBU so the PCBU can comply with the law.</p> <p>Other persons should report sexual harassment they experience so the PCBU can do something about it.</p>

TABLE 1: Duty holders under the Health and Safety at Work Act 2015

Disclaimer

This publication provides general guidance. It is not possible for WorkSafe to address every situation that could occur in every workplace. This means that you will need to think about this guidance and how to apply it to your particular circumstances.

WorkSafe regularly reviews and revises guidance to ensure that it is up-to-date. If you are reading a printed copy of this guidance, please check worksafe.govt.nz to confirm that your copy is the current version.

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