

7. Sexual Harassment

What Is Sexual Harassment?

Sexual harassment is any physical, visual, verbal or non-verbal conduct of a sexual nature, which is uninvited and unwelcome and which makes the recipient feel offended, humiliated or intimidated.

Legally, sexual harassment deemed to have occurred if the above occurs and if it is judged that in all reasonable circumstances the other person should feel offended, humiliated or intimidated by this behaviour.

Legal Protection

Sexual harassment is a legally recognised form of sex discrimination. Federal and State anti-discrimination laws prohibit sexual harassment. Sexual harassment can be a breach of an employer's common law duty to take reasonable care for the health and safety of employees. Sexual harassment can be a breach of occupational health and safety legislation.

Sexual harassment is a civil offence but it can also be a criminal offence. Criminal sexual harassment includes non-consensual physical touching of a sexual nature, indecent exposure, sexual assault, obscene communications (telephone calls, faxes, e-mail, letters etc), rape, stalking and restricting a person's freedom (standing over a person/blocking a person's only way to get away).

Forms

Sexual harassment is often about power. It usually occurs where the harasser has the authority to influence the terms or conditions of an individual's employment. However it is not only limited to those who are in a position of power over an employee. Teachers may also find themselves the subject of sexual harassment from parents of students or even the students themselves. If this occurs an employee is entitled to the same protection from sexual harassment as if the offence had occurred by a departmental employee/colleague.

Sexual Harassment Can Take Many Forms. Examples of sexual harassment include:

- Suggestive remarks
- Unwelcome sexual jokes
- Suggestive comments about a person's physical appearance or body
- Sexual propositions or continual requests for dates especially after a prior refusal
- Suggestive behaviour such as leering or ogling and gestures or body movements of a sexual nature
- Offensive photographs, posters, reading matter, t-shirts, graffiti placed where they can be seen by others
- Sexually explicit conversations
- Unnecessary familiarity such as brushing up against a person, patting, pinching etc
- Using authority or physical strength to place someone in a position where they feel sexually threatened
- Requesting sexual favours in exchange for a job, promotion, to prevent a disciplinary action etc
- Unwelcome questioning about a person's private life
- Sending offensive messages electronically or by any other means such as emails or telephone messages.

Who/Why?

Sexual harassment is an industrial issue. It goes to basic relationships in the workplace, often between employer and employee and sometimes between employees. Teachers may also find themselves the recipients of sexual harassment from parents and even students. In some cases the associated stress for individual victims makes it a direct health and safety issue. It certainly affects the rights of workers to participate on an equal basis in the workforce. For these reasons sexual harassment is an issue correctly covered by various Equal Opportunity Acts and the Federal Sex Discrimination Act.

Sexual harassment can happen to anyone, male or female, and of whatever sexual preference. It most often happens to women. It can be individual or group behaviour. It can be behaviour that has occurred outside of working hours, such as at a work social function, which has affected the complainant's work environment.

As sexual harassment also happens to and amongst students, they should be aware that sexual harassment is unacceptable behaviour. When Sexual harassment is perpetrated amongst students, it has an immediate impact on learning because it erodes self-esteem, confidence, constrains participation and choices and contributes to under achievement in many female students.

Importantly, the intention or motive of an alleged harasser is not relevant when determining whether the behaviour was unwelcome. Sexual harassment focuses on how the conduct in question was perceived and experienced by the recipient rather than the intention behind it. *Sexual harassment is not occasional compliments and mutual attractions that are consensual and acceptable to both parties. Sexual harassment is not sexual interaction, flirtation, attraction or friendship that is invited, mutual, consensual and reciprocated.*



Dealing with Discrimination/Procedures

If you are being sexually harassed you have a few options. For any option it is always a good idea to have a record of the sexual harassment incident, such as what happened, when/where it happened, who may have been present.

- **If you feel you are able to approach the Harasser - You can seek a personal resolution:**
This is when you deal with the sexual harassment incident(s) personally, with or without reporting the incident(s) to anyone. This usually involves a communication to the perpetrator that you feel they are responsible for sexually harassing you, and if they don't rectify their behaviour you will pursue your complaint more formally.
- **If you are unable to approach the Harasser, Or the behaviour doesn't stop – Seek Assistance and Consider a Complaint:**
You can contact **your union** (your workplace rep, Women's Contact, your organiser or the Women's Officer) or your state's/territory's Equal Opportunity Commission (EOC).

Workplaces (whether via a department or individually) should have internal complaints or grievance procedures – use them. However, some are better than others, and some are better utilised than others.

It's important that you DO report harassment when it occurs though even if you feel doubtful about the ability of the employer to act, because unless cases are reported the extent of the problem is unknown and therefore often downplayed as an issue – this should never happen and people should never suffer in silence!

Seek advice or lodge a complaint via the union or the EOC *at any stage of the process of the internal complaint.*

Complaints of sexual harassment, or subsequent victimisation, to Equal Opportunity Commissions often have a time limit (often six months) for how long since the incident(s) a complaint can be lodged to be aware of this.

Your workplace should provide you with access to the relevant complaints procedures or grievance procedures. Here you will find further details about your rights, process and other relevant information about sexual harassment.

- It is important when proceeding with a complaint that thought be given as to what outcome is sought. eg change of behaviour, apology, removal of student from class etc.
- If in the first instance the aggrieved opts for an informal process of resolution it is important to remember that you retain the option to proceed straight to the Equal Opportunity Commission at any point.

The AEU and its Branches and Associated Bodies (NSWTF, QTU & SSTUWA) is committed to providing members with a confidential, safe course of action should you become a victim of sexual harassment. The union is also committed to eliminating and redressing discrimination based on race, colour, gender, age, disability, marital status, pregnancy, family responsibility, religious conviction, political opinions, national or social origin or status, location, economic conditions or sexual preference.

What Can I Do?

Activism around Sexual Harassment

Action component :

- Know and USE grievance and harassment procedures.
- Report sexual harassment when it occurs.
- Speak up at workplace meetings if you are aware of bullying or intimidation tactics being used by anyone over women – look out for colleagues.
- Don't go it alone. It's not up to individual women to "be the strong ones" against colleagues who insistently use stand over tactics or condescending behaviour to assert power. It should be a workplace concern for all employees and the employer should also ensure it is not an invisible issue.
- Women can be encouraged to participate in relevant union training and/or become involved in OHS teams, mediation etc.

