

A GUIDE TO SEXUAL HARASSMENT IN THE WORKPLACE



Sexual harassment at work is a real problem for many women. Challenging harassment can be difficult because of fear of recriminations, being called a liar, or fear of losing a job and an income. However, there are legal protections that you can use to challenge this unacceptable behaviour.

This legal guide aims to help you if you are experiencing sexual harassment in the workplace. It provides an overview of the relevant law and sets out the procedure to use when bringing a claim of sexual harassment at work.

Sexual harassment at work is unlawful, and women who experience it are protected and given legal remedies by the **Sex Discrimination Act 1975** (referred to as the SDA in this guide). You have legal rights to protection and your employer or the business you work for is responsible for taking steps to protect you and to make sure that the harassment stops.

The SDA anti harassment provisions cover all employees from the first day of employment, regardless of the number of hours they work, or the type of contract they have.

The SDA also protects you if you are an agency worker, both at the place you are sent to work but also from victimisation or harassment by the agency itself. Women receiving or applying for vocational training are also protected.

Who can I approach for help?

Challenging sexual harassment in the workplace can be stressful, and the law is complex, so it is important that you seek legal advice. If you are a member of a trade union contact your representative or if not you could go to your local Citizens Advice Bureau or a Law Centre for free advice, see **Other useful telephone numbers** (below).

What is unlawful sexual harassment?

Lots of different types of behaviour can amount to harassment. It can be name calling, or nasty jokes, or constant comments about a person's appearance; comments of a sexual nature or sexual comments directed at

a woman; it can be bullying through management; or even refusing to speak to someone, or ignoring them. In some cases physical contact, sometimes constant touching, or petting, or even violent physical abuse such as pushing, or shouting, or throwing books will amount to harassment.

In order for conduct to be unlawful sexual harassment, it must be **unwanted** conduct that falls into **one of the two categories** described by the SDA.

The first type is any unwanted conduct which is **related to a woman being a woman**. This can be harassment if the conduct has the purpose or the effect of either **violating her dignity, or has the effect of creating an environment for her which is intimidating or hostile or degrading or humiliating or offensive**.

This type of harassment includes actions such as:

- name calling, for example, calling someone a stupid woman or a typical woman
- references to women's work or abilities
- rudeness to women on the team; ignoring women and listening to male workers
- undervaluing the contribution of women
- making sexist jokes

The second type of unlawful sexual harassment is any **unwanted verbal or non verbal or physical conduct of a sexual nature**.

This can be harassment if it has the purpose or effect of either violating a woman's dignity, or has the effect of creating an environment for her which is intimidating or hostile or degrading or humiliating or offensive.

This type of harassment includes:

- direct sexual remarks – comments about a woman's body or looks

- sexist jokes
- the display of sexist or pornographic material
- sexual touching, pinching, or patting
- sexual innuendo or suggestions

Sexual harassment may also include treatment such as demanding that women take clients to a lap dancing or a burlesque club.

What is unwanted conduct?

This simply means **conduct or behaviour that is not invited or welcomed by a woman**. The conduct will be unwanted if a woman finds it hostile or unpleasant, whether she says so at the time or not.

Does there have to be more than one comment made or lots of unwanted conduct?

No. Although there often will be lots of different occasions when someone makes remarks or comments, or is rude or offensive, even a one off remark can amount to unlawful harassment. Whether or not it is will depend upon what is said or done, and the circumstances.

Does the harasser have to intend to harass me? What if he says that it was only a joke?

Harassment can be deliberate and intentional **but it does not have to be**. Just because the person does not mean to harass you does not mean that you will not find them or their remarks hostile, intimidating or degrading. A woman is protected at work from unwanted conduct or behaviour if the conduct has the effect of making her workplace hostile, or

intimidating, **even if** the person whose conduct is causing the problem doesn't mean any harm, or has no idea that they are causing offense. The SDA is concerned with both the effect of unintentional conduct **and** deliberate harassment. This means that, as long as a woman is not **unreasonably sensitive**, if she is upset or offended or finds comments or jokes degrading she can ask for the person to stop, even if they are made innocently and with no intention of offending anyone.

I am being subjected to sexual harassment – what should I do?

Step 1: Show that the behaviour is unwanted

Step 2: Report the behaviour to a manager

Step 3: Report the behaviour to your employer as a formal grievance

Women are entitled to work with dignity, in an environment which is neither hostile nor intimidating, and if any conduct of others means the workplace is hostile for the woman then she has the right not to put up with it.

Show that the behaviour is unwanted

To make it clear to everyone that the conduct is unwanted, a woman who experiences harassment or comments should, if possible, tell the person making the comments or being unpleasant to stop, and why. If possible, you should tell the person how their behaviour makes you feel or how it affects you and also tell the person that it is harassment.

Do I have to make it clear that I do not want the behaviour to continue?

Strictly speaking, you do not have to complain or tell anyone in order for the conduct to have the effect of harassing you. However, if you think that you may want to take legal action, then it is important to consider complaining to both the harasser and your employers as soon as you can. You could get support from a friend, a work colleague or a trade union representative.

Report the behaviour to a manager

If showing the person that the conduct is unwanted does not make them stop, or if you find it too difficult to confront the person, you could tell a senior person in the workplace and ask them to tell him or her to stop, or you could report directly to your employer using a formal harassment policy or grievance procedure.

Your employer is legally responsible for ensuring that you are safe at work, and that you are not subjected to any form of discrimination. They are responsible for the actions of all employees and even some customers or third parties, even if they do not encourage or support the harassment.

If you make a complaint of harassment, the employer should take steps to stop the person who is causing the harassment. This might involve simply speaking to the person, or it might involve taking formal disciplinary action against the person. In most work places harassment of another member of staff will be misconduct under the contract of employment, and if proved, may lead to the harasser being moved to another workplace, or even dismissed.

Use a formal grievance procedure

If raising the matter informally does not end the harassment, or if you are asked to use a formal procedure to make a complaint, you could raise the matter under a harassment policy or grievance procedure. Many employers will have a policy or procedure to deal with harassment, which will set out clearly the steps to be taken by someone who believes they are being harassed. If your employer does have such a policy, you should ask for a copy, or if you have a trade union representative or other workplace representative, ask them to help you get a copy. If your employer does not have a formal policy dealing with harassment, they may have a grievance procedure, and you should try to use this instead.

If your employer does not have any sort of complaints or grievance procedure, then you should put your complaint in writing to a senior manager and ask them to deal with it as a grievance. If the employer does not deal with your complaint, or you are not happy with the way they have dealt with it, ask if you can appeal against the decision they have reached.

It is **very important** to realise that in order for you to take a complaint to an Employment Tribunal you **must first** make a complaint to your employer using a formal grievance procedure as set by ACAS guidelines (see below for more detail).

I am worried that no one will believe me

This is a common fear, particularly as many harassers make sure that they only make comments or remarks or only touch a woman when no one else is around. If this happens to you, you should try, if possible to avoid being

alone with the person or try to get witnesses. Of course, if you work together, this may be impossible.

If no one else has heard or seen the comments or remarks, and you think that you are being bullied or harassed it is a good idea to keep a diary of the things which upset you and what you have said and what you have done about it. This can be shown to your employer, and to an Employment Tribunal (see below) if necessary, to support your allegations and to help you remember what happened and when. When you are upset it can be very difficult to remember what happened, and writing it down on a regular basis can help.

If the harassment you experience causes you to become ill you may want to seek support from your GP. If you tell them what is happening, they can also support your complaint, with medical evidence.

If I complain, I am worried that I will lose my job, or not be promoted, or treated badly by the person I complain about

Although the law protects women from victimisation, many women have real and valid concerns that they will be victimised if they complain about harassment. It is a good idea to get some support from a trade union or a friend or colleague at work before raising your concerns, if you are worried about this.

Unlawful victimisation occurs when an employer or another person working for the employer treats an employee less favourably than they would do because the employee has made a complaint about discrimination, including harassment, or because they believe that the person is going to make a complaint.

The complaint can be an internal one or one to an Employment Tribunal. It is also unlawful to victimise someone because they give evidence on behalf of someone who complains of discrimination.

If you think that you have been victimised, you should complain about this in writing to your employer who should deal with it as a grievance, and if necessary by using the disciplinary procedure to deal with the person who has victimised you.

If you are not happy with the way your employer has dealt with it, you can complain to an Employment Tribunal of unlawful discrimination by way of victimisation.

Can I take my complaint to court?

Yes. If you complain to your employer and they decide that what has happened does not amount to harassment, and you think they have not made the right decision, you can make a claim to an **Employment Tribunal (an ET)**. The ET will then decide whether as a matter of law your treatment is unlawful harassment or not.

The ET will make a decision about whether or not what you have experienced amounts to harassment by considering the surrounding circumstances such as the comments made, how they were said, what other people thought about them, and how they affected you, and whether or not any behaviour ought to be considered to be harassment. In making this decision, both the employer and the ET must take particular and specific account of what the woman who makes the complaint says about the treatment. The SDA provides that the views of the woman who is complaining of

being harassed are of particular importance in deciding whether it is harassment or not.

If it is found that you did experience sexual harassment the ET can make a **declaration** that you were discriminated against or can make a **recommendation** about your harasser and how they should be dealt with.

Additionally, if you are not happy with the way that your employer has dealt with your concerns, or if you have lost your job, or if you have experienced ill health through stress or depression as a result, you may want to seek compensation by making a complaint to the ET. If the ET finds that you have been unfairly dismissed because of the harassment, or because you made a complaint, the ET could order your employer to **reinstate you**, if that is what you want. The ET can also award you **compensation** for injury to your feelings, for psychological harm or for any financial losses you have experienced.

What do I have to prove?

The ET must look at the facts and then consider whether your employer is liable (responsible) for the sexual harassment you experienced. They must consider whether the incident took place '**in the course of your employment**'. For example, did the incident take place during work hours or on work premises? This could include an incident which occurs during a work social event. This is known as your employer's '**vicarious liability**'.

The ET will also consider whether the sexual harassment could have been prevented or controlled. This is known as your employer's '**direct liability**'. It is possible that an employer may try to avoid liability for what has

happened to you by saying that it is just your harasser who is responsible. For this reason you should seek legal advice about whether your claim to the ET should be lodged as against both your employer **and** your harasser.

When should I make a complaint to the ET?

You must send your claim to the Employment Tribunal within **three months** of the incident or incidents of harassment you are complaining about. This means that if the last comment or joke which upset you was made on the 12th January 2010, you must make sure that your claim form reaches the ET office by 11th April 2010. If you do not claim in time, you may not be able to pursue the claim at all.

If you have experienced a long period of harassment, the three months may start from the last incident, but you must still file your claim within three months.

Before making a claim you should raise your complaint by making a formal grievance with your employer. This is a formal requirement and if you do not raise a grievance, and win your claim, your damages may be reduced because of this. Your damages can also be reduced if you do not appeal against an initial decision by your employer that you were not harassed.

Advice and information is available from the **Advisory Conciliation and Arbitration Service (ACAS)** which sets out basic minimum standards for employers **and** employees in trying to resolve disputes in the workplace before going to Tribunal. The Code of Practice (and accompanying Guide) can be found on the ACAS website www.acas.org.uk and can be downloaded for a small fee. Alternatively the

Code can be downloaded free of charge from www.emplaw.co.uk/content/index.

It is crucial that you comply with the Code if you think that you may wish to make a claim to the Employment Tribunal.

How do I make a complaint to the ET?

You must use a standard form to make your complaint. These are available from the Employment Tribunal website www.employmenttribunals.gov.uk and can be filled in online. There is also an Employment Tribunal public enquiry line on 08457 959775. You can also get a paper copy to be filled in by hand from some Jobcentres, Law Centres and Citizens Advice Bureaux.

You should give details of all the incidents and matters which you are complaining about, and should state that you are complaining about harassment under the Sex Discrimination Act 1975.

Once a claim is submitted a copy is sent to your employer for a Response to be filed within 28 days. The Tribunal will then set a hearing date for your case and notify you of this. In complex cases a case management or other hearing may be held before a final hearing to discuss what needs to be prepared for the final hearing. It is important to comply with any directions the Tribunal makes in order to avoid having your claim struck out or being ordered to pay extra costs.

Questionnaires

The SDA 1975 enables you to send a special questionnaire to your employer. This can be an important way of gaining valuable information

which may assist your case. It is an optional step and the questionnaire is quite complex, so it is recommended that you seek legal advice.

What can I expect from the ET hearing?

You will be expected to attend the hearing date and give evidence in front of a Tribunal panel. If you have any witnesses to the harassment they may also be required to give evidence.

The proceedings are not private and most ET hearings are open to the public. **However**, where a case involves allegations of sexual misconduct the ET can make an order which stops the press from naming individuals until the ET issues its written decision.

Public funding (often known as legal aid) is **not available** for representation at an ET. You will have to therefore pay privately for legal representation or represent yourself at the hearing. However you may be entitled to legal assistance via your union and/or under a household contents insurance policy, or you may wish to obtain advice from a local Citizens Advice Bureau (CAB), Law Centre or the Equality and Human Rights Commission. Sometimes a Citizens Advice Bureau or Law Centre can refer you to organisations such as the Free Representation Unit (FRU) for free legal representation at your ET hearing. See **Other useful telephone numbers** (below).

Harassment outside work

If you have been harassed outside your workplace, for example if you have received threatening phone calls or letters, you may be able to report the matter to the police. Alternatively you could apply for an injunction against your harasser and claim damages under the Protection from Harassment Act 1997. Further information can be obtained from the Rights of Women advice line (see below). You could also read Rights of Women's legal guides **A guide to domestic violence injunctions** and **Reporting an offence to the police: a guide to criminal investigations** available on our website.

Other types of discrimination

You may also have claims under race, religion, age, disability or trade union legislation if the harassment you have experienced is because of one of these factors.

The law relating to sexual harassment is complex and we have provided a very basic overview of the terminology, law and ET practice and procedure. We would strongly advise any woman considering bringing a claim for sexual harassment to seek legal advice by contacting a solicitor, her trade union or one of the organisations listed below.

Please note that the law as set out in this legal guide is the law as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this legal guide. This legal guide is designed to give general advice only.

For free, confidential legal advice on family law including domestic violence, divorce and relationship breakdown, children and contact issues call the Rights of Women Advice Line on 020 7251 6577 (telephone) or 020 7490 2562 (textphone). The advice line is open on Tuesdays, Wednesdays and Thursdays 2pm – 4pm and 7pm – 9pm and Fridays 12 noon – 2pm.

For free legal advice on sexual violence, the criminal law, and immigration and asylum issues please call our Sexual Violence Advice Line on 020 7251 8887 (telephone) or 020 7490 2562 (textphone). The advice line is open on Mondays 11am – 1pm and Tuesdays 10am – 12 noon.

Other useful telephone numbers

ACAS (Advisory Conciliation and Arbitration Service)	0845 747 4747	www.acas.org.uk
Community Legal Advice (for information and finding a solicitor)	0845 345 4345	www.communitylegaladvice.org.uk
EHRC (Equality and Human Rights Commission)	0845 604 6610	www.equalityhumanrights.com
Law Centres Federation (to find a local law centre)	020 7842 0720	www.lawcentres.org.uk
Law Society	020 7242 1222	www.lawsociety.org.uk
Trade Union Congress (and links to the worksmart website)		www.tuc.org.uk
Pay and Work Rights Helpline	0800 917 2368	
Citizens Advice Bureau		www.citizensadvice.org.uk

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