



8. Sexual Harassment

There seems to be a perception that sexual harassment in the workplace is an 'old issue'. Current research reveals the opposite. A recent Victorian government study showed a disturbing 62% of women surveyed had experienced some form of violence in the workplace in the past five years.ⁱ

What is sexual harassment?

Sexual harassment is an unwelcome sexual advance or any other unwelcome sexual conduct which a reasonable person would anticipate would make another person feel offended, humiliated or intimidated.

Who can be sexually harassed?

The vast majority of sexual harassment occurs against women by men. Men (including gay men) can be sexually harassed as can lesbian women. In the workplace, sexual harassment laws apply to employees, contractors, customers and clients. Sexual harassment can be a one-off incident or on-going behaviour.

A threat to rights

Sexual harassment is a breach of international human rights. Women have the right to be free from violence, which includes acts that inflict physical, mental or sexual harm or threats of such acts.^{ii,iii}

The right to work is also a fundamental human right.^{iv} Sexual harassment in the workplace prevents women from exercising their right to work and be economically independent. Women often leave the workplace after complaining about sexual harassment which limits women's opportunities to work and places them in a financially vulnerable situation.

What behaviour can sexual harassment cover?

- Asking for sex
- Physical behaviour of a sexual nature^v
- Sexual comments, jokes and innuendos^{vi}
- Intrusive questions or comments about private life or appearance^{vii}
- Unwelcome touching, hugging, cornering, kissing, unnecessary familiarity, staring^{viii}

- Use of the internet, mobile phones and SMS to transmit pornographic and other offensive material^{ix}

Mutual attraction

Behaviour that is consensual and reciprocated is not 'unwelcome conduct'. However, this does not apply if a person's consent has been gained through intimidation.

The workplace follows the worker. Whether a worker is performing work from home, at a client's office, in a car, or is at a work conference or office party, all of these places will be taken to be the workplace.

What practical steps can be undertaken?

1. Whether you are or you observe someone else being sexually harassed - do not remain silent.
2. As soon as possible, tell the offending person that the behaviour is not welcome and offensive, or if you feel uncomfortable telling the person directly, seek assistance.
3. Access your employer's sexual harassment policy. Make a complaint and document what has happened as soon as possible after the event(s). It is your right to make a complaint, and it is unlawful to victimise someone for making a complaint.
4. Contact your relevant Human Rights/Equal Opportunity commission (State and federal) for further guidance.

Remember - everyone has the right to work in an environment free of sexual harassment, and everyone has the responsibility to create and maintain such an environment.

ⁱ Department of Premier & Cabinet - 'Media Release From the Minister for Women's Affairs: Call for Public Submissions about Violence against Women at Work'
http://www.dpc.vic.gov.au/domino/Web_Notes/newmedia.nsf/955cbeae7df9460dca256c8c00152d2b/75c63ea35b4ab6deca25707d0002384f1?OpenDocument

ⁱⁱ General Recommendation 19 on Violence Against Women made by the Committee on the Elimination of Discrimination against Women Discrimination includes violence in the prohibition of gender-based discrimination - www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19

ⁱⁱⁱ General Recommendation 19 at paragraphs 6 and 7 - Gender based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of

Article One of The Convention on the Elimination of All Forms of Discrimination Against Women.

^{iv} The right to work is contained in the UN Universal Declaration of Human Rights and also contained in the International Covenant on Economic, Social and Cultural Rights. Article 23 of the Declaration further provides the right to free choice of employment and to just and favourable conditions and protection against unemployment.

^v Human Rights and Equal Opportunity Commission 2003: A Bad Business Review of sexual Harassment in Employment Complaints in 2002, HREOC, Sydney, p.17.

^{vi} Working Against Sexual Harassment (WASH), Taking It Seriously. Contemporary Experience of Sexual Harassment in the Workplace, WASH, 2004, p. 17

^{vii} Ibid

^{viii} Human Rights and Equal Opportunity Commission 2004: Sexual Harassment 20 Years on: The Challenges Continue – Sexual Harassment in the Australian Workplace, p. 26.

^{ix} JobWatch Inc 2004 Sexual Harassment in Employment – Workers Still Exposed, p. 8.