



Sexual Harassment at Work

An Advice Guide
for Usdaw Reps



What is Sexual Harassment

Sexual harassment is behaviour which is imposed on another person and is of a sexual nature. It is unlawful under the Equality Act 2010*. The Act describes harassment as:

'unwanted conduct of a sexual nature, that has the purpose or effect of violating her dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for her'.

It can cover a wide range of behaviour including: physical contact of any sort; suggestive remarks or so called 'jokes'; sexual propositions; unwanted comments on dress, body shape or appearance; verbal abuse of a sexual

nature; leering; questions or jokes about your sex life; unwelcome touching and displaying pornographic pictures or pin-ups.

The common feature of all this conduct is that it is unwanted by the person on the receiving end. Whether or not the harasser intended to be objectionable is not the point. If the behaviour is unwelcome and the attention is not wanted by the other person, it may well amount to harassment.

*The Sex Discrimination (Northern Ireland) Order 1976



Sexual Harassment is an Important Issue for Usdaw

Sexual harassment is a widespread and serious form of sex discrimination.

It is overwhelmingly a problem experienced by women. However, harassment can be directed by women towards men. Young men, gay and transgender men can be particularly vulnerable.

But generally it is women, of all ages, who face harassment from fellow employees, from a boss or from members of the public.

This guide aims to provide back-up information and support to Usdaw reps who are taking up this issue with employers.

Further information is available on request from the Equalities Section at Head Office.

Recent Developments

Along with union pressure, there are several developments which are pushing employers to take action on this issue.

Recent high profile revelations about powerful figures in the film, television and other industries as well as politicians in Westminster have heightened awareness of sexual harassment and led to the recognition that is a widespread and serious form of sex discrimination.

Sexual harassment doesn't just happen in Hollywood or Westminster. Usdaw recently found out more about the experience of our members by running a survey. We found:

- The majority of women members – 7 out of 10 – have experienced sexual harassment at some point in their working lives.
- Overall, 6 out of 10 women have experienced sexual harassment in the last 12 months.
- 7 out of 10 young women have experienced sexual harassment in the last 12 months.
- For most, sexual harassment consists of 'banter', so-called jokes and unwanted comments about physical appearance.
- Lesbian, gay, bisexual and transgender (LGBT) members experience a particular form of sexual harassment involving intrusive and inappropriate comments and questions about their sex lives and bodies.
- For most people sexual harassment happens at work.
- Most people don't tell their employer about the harassment.

The Equality Act requires employers to take action to prevent harassment from occurring in workplaces.

Sexual harassment can happen in a range of different places including:

- The workplace.
- At a work social event.
- On social media.
- By telephone.
- By email.

The harasser could be your manager, a colleague or a customer.

For more information about the experience of Usdaw members and to order workplace campaign materials contact Usdaw's Equalities Section by emailing equalitymatters@usdaw.org.uk

The Equality Act 2010 – Strengthening and Extending Protection

The introduction of the Equality Act 2010 in England, Wales & Scotland strengthened the law on harassment and extended its scope. Similar sex discrimination legislation protecting workers from sexual harassment also exists in Northern Ireland.

The law also protects those who may not themselves be subject to harassment or unwanted conduct, but who witness harassment or work in an environment where harassment takes place. In order to raise a complaint you would have to show that the unwanted conduct had the effect of violating your dignity or creating an intimidating, hostile, degrading or offensive environment.



The Code of Practice to the Equality Act gives the following example:

'During a training session attended by both male and female workers, a male trainer makes a number of remarks of a sexual nature to the group as a whole.

A female worker finds the comments offensive and humiliating to her as a woman. She would be able to make a claim for harassment, even though the remarks were not specifically directed at her.'

Employers have a duty of care to all their employees to take reasonable steps to prevent bullying and harassment. They also have responsibilities under the Health and Safety at Work Act 1974 for the welfare of employees.

Lesbian, gay and bisexual members are also protected from harassment on grounds of their sexual orientation or perceived sexual orientation by the Equality Act and equivalent legislation in Northern Ireland. This means that if someone is harassed because they are wrongly believed to be lesbian, gay or bisexual they can still bring a claim of harassment under the Act. For more information, see Usdaw leaflet no. 337 *Lesbian, Gay, Bisexual and Transgender Rights at Work*.

Transgender workers are also protected from harassment. The law protects anyone who lives their life permanently in the sex opposite to that in which they were born. A person does not have to undergo any medical treatment in order to be protected.

For more information, see Usdaw leaflet 424 *Changing Gender - Understanding the Issues*.

For the legal definition of harassment see Appendix 1 on page 13 of this guide.

Getting it Right

There are several measures that employers can take to stop harassment from occurring in the first place. These measures include:

- Drawing up a specific policy on sexual harassment.
- Setting up training programmes for managers and supervisors.
- Introducing methods of monitoring to test the effectiveness of the policy.
- Establishing procedures to deal with complaints of sexual harassment.
- Ensuring that details of the policy and procedures are included in induction and training programmes for all staff.

Negotiating a Policy and Procedures

Every employer should have a policy on sexual harassment and a procedure for dealing with it. When taking up this issue union reps may find it helpful to consider the following points:

Negotiating a policy

- Since the main aim is to prevent sexual harassment, does the policy make it clear that it is unacceptable behaviour and that it will be considered a disciplinary matter?
- How is the policy to be communicated to all employees, trainees and job applicants?
- Where the employees' duties bring them into contact with the public, does the policy recognise the employer's duty to prevent and/or deal with any harassment from this source? (See Usdaw leaflet 429 *Abuse is Not Part of the Job!*)

Even where an employer already has an equal opportunities policy or equal opportunities clause in an agreement, it is advisable that a separate, specific clause, relating to sexual harassment, is incorporated. A sample clause is set out on the following page.



A Sample Clause

Usdaw and the employer recognise that all employees have a right to a working environment free from sexual harassment and are committed to ensuring such harassment does not occur.

Sexual harassment is unlawful under the Equality Act. The Act describes sexual harassment as:

'Unwanted conduct related to a woman's sex or that of another person that has the purpose or effect of violating her dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for her.'

When deciding whether behaviour amounts to harassment, a tribunal must take into account the perception of the person on the receiving end. It can still be harassment if that individual perceives it to be so, even if another individual would not (although with the proviso that it must 'reasonably' be considered as such).

Transgender workers also have legal protection from harassment where the harassment is related to gender reassignment and Lesbian, Gay and Bisexual (LGB) workers have legal protection from harassment where the harassment is related to sexual orientation.

The term now encompasses a wide range of behaviours including:

- Unnecessary touching or unwanted physical contact.

- Suggestive remarks or other verbal abuse.
- Leering and other sexually intimidating actions.
- Compromising invitations.
- Demands for sexual favours.
- Physical assault.

The conduct itself does not have to be of a sexual nature but must be related to their sex.

Sexual harassment will not be tolerated and will be regarded as a disciplinary offence including, where appropriate, gross misconduct.

Sexual harassment should be considered as discrimination under this clause.



Grievances under this clause will be handled with all possible speed and confidentiality. In settling the grievance where relocation is a concern every effort will be made to relocate the harasser, not the person harassed.

Where the harassment involves a member of the public harassing an employee, the company resolves to take action as appropriate, in consultation with the Union.

Pornographic pictures, posters and calendars will not be displayed or circulated in the workplace. It will be an offence to do so.

The company undertakes to provide training for management and employees to raise awareness of this issue, to alert all workers to the contents of this policy statement and to the details of procedures which have been set down to deal with complaints of sexual harassment.

This policy will be circulated to all employees, trainees, job applicants and contractors. It will be made known to customers. In conjunction with the Union, it will be regularly reviewed for effectiveness and resultant changes notified to all employees.



Negotiating Special Grievance and Disciplinary Procedures

- Does the procedure establish a clear Union presence? It is important that the procedure makes it clear that Union representation is available at every stage.
- Does it provide for the person being harassed to be represented by the Union at all stages?
- Does it provide for a woman union rep to be involved to support the harassed member?
- Does it make specific provision for the Union to arrange representation for both the alleged harasser and the complainant in the event that they are both union members? It is important that provision is made for separate representation to be made available to both members.
- Is the procedure clear and does it set strict time limits? Harasser and harassed should know how long an investigating panel will be given to consider the matter, the time scale for disciplinary hearings and the procedure the panel will adopt.
- Does the procedure make provision for taking complaints direct to senior or personnel managers if the alleged harassment has been carried out by supervisors or managers?
- Does the procedure make it clear that it is only evidence about the alleged incident which will be considered and that information about an individual's personal life, previous relationships or general behaviour will not be considered?
- Does the procedure provide for strict confidentiality?
- Does the procedure ensure that an appropriately trained woman member of management is involved in the investigation?
- Does the procedure make provision to protect the complainant while the procedure is invoked and after any action, including disciplinary action, is being taken? (The Equality Act protects anyone who gives evidence in support of a complaint. This protection covers any subsequent victimisation by the employer or any other party.)
- In the event that it is decided that it is necessary to relocate the staff involved, is it made clear that the first option will be to move the harasser and not the person who has been harassed (unless the person who has been experiencing harassment specifically requests a relocation)?
- Are the penalties, including strict time limits for any period of suspension of all alleged harassers, clearly set down?

- Is there agreement that Usdaw/Sata reps should have paid release for training through Usdaw's Education Department in the special complaints procedure?
- Have appropriate means of publicising the procedure been agreed so that all staff, contractors and customers are aware of the policy, the procedure and the consequences of their actions?
- Report the incident(s) to management.
- Keep (a) a record of each occurrence of the offending conduct (b) copies of any letters sent to the alleged harasser about his conduct and (c) notes of any meetings about the incident(s).
- Advise the member that if the matter is not resolved through the procedures, it may be possible to take the matter to an Employment Tribunal. Tribunal claims must be lodged within strict time limits - normally three months less one day from the date of dismissal or cause of complaint ie the date the harassment occurred. Remember to always follow company grievance and appeal procedures.

Supporting a Member Experiencing Sexual Harassment

Given the nature of the issue it is important that union reps should:

- Treat all cases of sexual harassment seriously and support the members involved.
- Take up cases as quickly as possible.
- Establish whether other workers have experienced similar problems.
- Advise the worker complaining of sexual harassment about what to do and about the grievance procedure.
- Before invoking a formal procedure, you may want to advise the complainant to ask the harasser to stop. If she wishes you, as her rep, to do so on her behalf, you can do this. However, the Code of Practice to the Equality Act makes it clear that express objection doesn't have to be made to the conduct for it to be deemed unwanted. A serious 'one off' incident can amount to harassment.
- Seek the support, with the member's agreement, of other workers in order to reduce the risks of isolation and victimisation.
- Make provision for the harassed member to discuss the matter with a woman union rep. Arrangements can be made in each region of the Union for sexual harassment matters to be discussed in strict confidence with a woman union official if the member wishes this.



Harassment Counsellors

Some companies are now offering staff who have experienced harassment the opportunity to receive counselling. Genuine counselling has been shown to be beneficial in helping people come to terms with difficult or stressful experiences. It does this by providing space to talk in a supportive and non-judgmental setting. The counsellor will help work through the after effects of the experience.

A survey of Usdaw members' experiences of counselling at work has shown that, where genuine counselling exists, it is valued and seen as beneficial by employees. Genuine counselling should not be confused with disciplinary counselling, which is used by many employers.

Disciplinary counselling refers to the informal interview that takes place prior to using the disciplinary procedure. Genuine counselling bears no relation to this and is intended to help employees who are in distress. This form of counselling is voluntary and respects the right of the complainant to make their own decisions.

If you are involved in negotiating with your employer over the introduction of a workplace counselling service you should use the following checklist. This will help you to ensure that the service is properly run.

- The counselling service should be confidential. Details of an employee's case should not be shared with the employer even if the counsellor is a company employee.
 - The counsellor should hold a recognised counselling qualification such as a Diploma or MA in Counselling. They should also be accredited by a professional counselling body. This is likely to be the British Association for Counselling.
 - The counsellor should be receiving regular supervision from another qualified counsellor.
 - Counselling is not an alternative to pursuing a case through the harassment procedure.
 - The counsellor should have no role in the investigation of the case, nor should they act as an advocate. The role of the counsellor is separate from the advice and representation which an Usdaw/Sata Shop Steward or an Area Organiser can provide.
 - Counselling is best provided by someone who is not an employee of the company. In-house counsellors may not be able to guarantee the same degree of confidentiality as an external provider.
- Union negotiators should try to persuade companies to use an external counselling service.

Wider Trade Union Responsibility

Usdaw recognises that the Union has a wider responsibility to ensure that members attending union meetings or conferences or representing the Union, are not subject to sexual harassment.

The Education Department, for example, issues guidelines to all members and officials participating in union training courses. Guidance is also given at the Annual Delegate Meeting.

There is still much work to be done here. Sexual harassment in the course of union business is not impossible. Where members of different unions are involved, procedures generally do not exist. It is, therefore, important that union reps and full-time officials are particularly vigilant so that support and assistance is readily available if a member/union rep experiences harassment whether at meetings, courses or conferences.



Appendix 1

Sex Discrimination and the Law

Sexual harassment is dealt with by the Equality Act.

The law says that a person subjects a woman to harassment if:

He engages in unwanted conduct which is related to her sex or that of another person and that has the purpose or effect:

- Of violating her dignity.
- Of creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

The word unwanted means essentially the same as 'unwelcome' or 'uninvited'. Harassment can be a series of incidents but a 'one off' incident might also amount to harassment if it is serious.

A woman complaining of harassment under the Act is only required to show that the alleged treatment was connected or associated with her sex and not that it took place because she is a woman.

In addition to harassment in the form of unwanted conduct related to sex there are two further definitions applicable only to sex and gender reassignment:

- Unwanted conduct of a sexual nature, and
- Harassment because of rejection of submission to the conduct.

The Equalities and Human Rights Commission (EHRC) Employment Code says conduct of a sexual nature can cover verbal, non-verbal or physical conduct including unwelcome sexual advances, touching, forms of sexual assault, sexual jokes, displaying pornographic pictures or sending emails with materials of a sexual nature.

The Effect of Harassment

When deciding whether or not someone's behaviour amounts to harassment, a tribunal must take into account the effect that behaviour had on the person on the receiving end. What the intention or purpose was of the person committing the behaviour or making the remark is not as important. This prevents people from trying to defend their actions by saying things like "I didn't mean it" or "It was only a joke."

It is harassment if a person perceives it to be so even if another person would not, although with the condition that it must be 'reasonably' considered as such. The Code of Practice to the Equality Act states:

'A tribunal is unlikely to find unwanted conduct has the effect, for example, of offending a worker if the tribunal considers the worker to be hypersensitive.'

Under the Equality Act an employer can be liable for the actions of an employee where he knows or ought to know that harassment is taking place and fails to take reasonable steps to prevent it. Liability may extend not just to acts carried out during working time, but even to acts carried out outside working hours and off workplace premises.

A Safe and Healthy Working Environment

As well as obligations under the Equality Act, employers have a duty to provide a safe and healthy workplace. Where sexual harassment results in an injury to an employee's health or places them under considerable stress, the employer might be held to be in breach of their obligations under Health and Safety legislation. It may also give rise to a personal injury claim for compensation in the civil court.

Civil or Criminal Law

Certain acts of sexual harassment may amount to unlawful assault giving rise to civil or criminal liability. In particular, indecent assault is a serious criminal offence.

If there is a possible criminal offence a claim may also be made to the Criminal Injuries Compensation Authority provided the matter has been reported to the police within 48 hours.

The Sex Discrimination (Northern Ireland) Order 1976 and Subsequent Amending Legislation

Although the Equality Act 2010 has not been implemented as yet in Northern Ireland, there is very similar legislation making sex discrimination and sexual harassment unlawful. The content of this leaflet there also applies to reps and members in Northern Ireland.

For more information about sex discrimination legislation in Northern Ireland visit the Equality Commission for Northern Ireland website at equalityni.org



Appendix 2

What the Courts Say About Sexual Harassment

- 1. The Court Of Session
Porcelli -v- Strathclyde Regional Council (1986) IRLR 134**

Sexual harassment can amount to sex discrimination as defined in the Sex Discrimination Act 1975.
- 2. The Employment Appeal Tribunal
Bracebridge Engineering Ltd -v- Darby (1990) IRLR 3**

A single incident of sexual harassment can amount to an act of unlawful sex discrimination.

A failure by an employer to treat seriously an allegation of sexual harassment made by a woman employee can give that woman grounds for a claim of constructive dismissal.

**Enterprise Glass Co. Ltd -v- Miles
26th July 1990 – EAT 538/89**

If harassment continues even after a formal warning has been given to the harasser, the employer must follow up that warning with further disciplinary action.

- 3. The Industrial Tribunal
Veebel -v- Leicester Federation of Tenants Association (Leicester IT. Case No. 20 778/88)**

Compensation for injury to feelings can include aggravated damages.

Gowndrill -v- Townhill and Pinefleet Ltd (Hull IT. Case No. 21269/90)

Evidence from former employees that they have been harassed can be relevant in determining whether the applicant had been harassed by the same man.

Whittington -v- Morris and Greenwich Health Authority (London South. Case No. 17846/89)

A man found by the Industrial Tribunal to have harassed a female colleague should be moved to a post where he would no longer come into contact with her.

Longmore -v- Lee (London North. Case No. 21745/88)

Dismissing a woman for having made a genuine complaint of sexual harassment (ie her allegations were made in good faith) amounts to victimisation.

**Johnstone -v- Fenton Barns
(Scotland) Ltd (Edinburgh. Case
No. S/1688/89)**

Offensive lewd behaviour amounts to sexual harassment.

**Crane -v- VC Link Ltd
(London South. Case No. 07017/89)**

Companies can be liable for sexual harassment by their supervisors even if they did not know about the harassment, if they have taken no positive steps to prevent harassment occurring.

**Mullan -v- Department of
Employment
(London North. Case No. 20113/90)**

Failure to treat seriously a complaint of sexual harassment can amount to unlawful discrimination.

**Carter -v- Westcliffe Hall
(Sidmouth) Ltd
(Exeter. Case No. 31165/91)**

An employer must take steps to prevent sexual harassment from occurring. It is not sufficient to show that discrimination has been promptly remedied.

**Burton and Rhule -v- De Vere
Hotels**

An employer must take proper steps to protect those who are subjected to harassment in circumstances which are within the control of the employer.

Employers are under a duty, where reasonably practicable, to protect employees from being harassed by any third party – customer, client or member of the public – with whom they have to deal.

**Insitu Cleaning Co Ltd and
Another -v- Ms. D. Heads**

Unwanted harassment means 'unwelcome' or 'uninvited'. Procedures should have an informal first step to enable complaints to be dealt with at an early stage and should deal with the complaint from the viewpoint of the person aggrieved.

Increasing numbers of sexual harassment cases are being pursued at Employment Tribunals. The introduction of the Equality Act has meant that employers must take action to prevent harassment.

Appendix 3

Usdaw Legal Plus

Sexual harassment at work is an employment problem covered by the Union's Legal Services.

Sexual harassment is unlawful under the Equality Act.

Usdaw aims to resolve employment matters using workplace procedures.

Employment cases will usually be dealt with by Usdaw reps in the workplace supported by Area Organisers (full-time union officials). Usdaw's Legal Department supports and advises reps and officials.

If a grievance or disciplinary matter cannot be resolved using workplace procedures then the member may wish to make a claim to an Employment Tribunal.

Tribunal cases are usually dealt with by an Area Organiser and Usdaw's Legal Department. The Legal Department may occasionally refer some cases to our panel of solicitors but this is unusual. The Head of Legal Services decides whether someone will be represented and by whom.

If a member needs legal assistance for an employment matter they must complete a Member Pack. In employment cases you should always ask members to contact their Area Organiser without delay.

It's important that members and reps understand company disciplinary and grievance procedures and use them.

Members and reps must also be aware of tribunal time limits and the requirement to contact Acas regarding Early Conciliation.

For help and advice about sexual harassment you can either contact your union rep, your Area Organiser, call the Usdaw Helpline on **0800 030 80 30** or visit the Usdaw website at www.usdaw.org.uk

Remember: support and assistance is available from the Union.

The Protection from Harassment Act

Serious and repeated harassment may be an offence under this Act and you may need to consider informing the police with a view to bringing a criminal prosecution under the Act. This Act can also be used to bring a civil claim against an employer.

Injunction Under the Protection from Harassment Act

It is also possible to apply to the civil court for an injunction under the Act. This is particularly useful in stalking cases.

Sexual harassment – Sexual Assault

Where the harassment includes indecent assault then you may consider informing the police with a view to bringing a criminal prosecution.

Criminal Injuries Compensation Authority

If the assault is capable of being a criminal offence and injury follows (including psychological injury) then you may wish to claim compensation under the CICA scheme. To do this you must report the matter to the police within 48 hours and it is helpful if you have sought medical advice eg, from your GP. The claim must be brought within two years of the assault.

You must complete a CICA application form promptly. The Usdaw Legal Department can help you make a claim under the Legal Plus scheme. To lodge a claim, you must call the FirstCall Usdaw number: **0800 055 6333**.

Making a Personal Injury Claim

If you are injured as a result of harassment (physically and/or psychologically) you may also be able to make a personal injury claim for compensation against the individual harasser and the employer. The Union's Legal Department will advise you about this. Call the FirstCall Usdaw number on **0800 055 6333** to make a claim.



More Information

Usdaw Nationwide

Wherever you work, an Usdaw rep or official (Area Organiser) is not far away. For further information or assistance, contact your Usdaw rep or local Usdaw office. Alternatively you can phone our Freephone Helpline **0800 030 80 30** to connect you to your regional office or visit our website: www.usdaw.org.uk

You can also write to the Union's Head Office. Just write **FREEPOST USDAW** on the envelope and put it in the post.

Join Usdaw

You can join online at:
www.usdaw.org.uk/join



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join today

What Happens Next

Once we process your application, you will receive a membership card with our Helpline telephone number and a New Member's Pack giving details of all the benefits and professional services available to you.

