

WORKING WOMEN'S
RESOURCE CENTRE



Harassment and Discrimination

a guide to your rights

Advice about dealing with
Sexual Harassment
Racial Harassment
Bullying

Contents

2 Introduction

3 Part One - Sexual Harassment

- 3 1. (a) What is Sexual Harassment?
- 4 1. (b) Sexual Harassment and the law
- 4 1. (c) Effects of Sexual Harassment
- 4 1. (d) Stopping it before it starts
- 4 1. (e) Role of the employer
- 6 1. (f) Dealing with it

8 Part Two - Racial Harassment

- 8 2. (a) What is Racial Harassment?
- 8 2. (b) Racial Harassment and the law

9 Part Three - Bullying or general harassment in the workplace.

- 9 3. (a) What is bullying or general harassment in the workplace?
- 10 3. (b) Bullying and the law
- 10 3. (c) What can you do if you are being bullied at work?

11 Part Four - Discrimination

- 11 4. (a) What is Discrimination?
- 11 4. (b) Discrimination and the law

11 Part Five - What is not harassment?

12 APPENDICES

- 12 Appendix 1: Human Rights Act 1993 (section 62 and 63)
- 14 Appendix 2: Employment Relations Act 2000 (section 108)
- 15 Appendix 3: Model Harassment Clause
- 16 Appendix 4: Model Harassment Statement



Introduction

Harassment (sexual, racial and bullying) and discrimination in the workplace are serious workplace issues.

At some time we may experience some form of inappropriate behavior from others. If at work, or among work colleagues, this behaviour may be from people of the same or opposite sex.

Depending on how we feel at the time, we may not see the behavior as a problem, we might grin and bear it, try to ignore it or tell the person to stop. We may also attempt to get away from the situation as soon as possible.

When sexual harassment, racial harassment, bullying and/or discrimination occur in the workplace, it raises some very complex issues for all of us.

Effects On Workers:

- Adversely effect work performance which can impact performance reports.
- Cause ill health through stress, fatigue, depression.
- Be the cause of absenteeism.
- Shake self confidence and self esteem.
- Jeopardise current job and effect future opportunities for promotion and/or other employment prospects.

Effects On Employers:

- Increased absenteeism
- Reduced performance and productivity,
- Breakdowns in workplace relationships
- Low morale, unhappy, unmotivated staff
- Unhealthy workplace culture,
- Increased staff turnover
- Time spent investigating and dealing with complaints.
- Litigations, industrial action, damaged reputations.

Note:

With Harassment and bullying, power is usually an element. Sexual Harassment requires that there is behaviour of a sexual nature.



Part One - Sexual Harassment

1. (a) What is Sexual Harassment?

Definitions of sexual harassment:

Sexual harassment in employment is about inappropriate behaviour; it may be words that are said to, or in front of, a person, physical behaviour around another person or visual material on paper or on a computer screen which is:

- of a sexual nature
- unwelcome or inappropriate
- and is offensive
- And is repeated or significant enough to cause detriment.

Sexual harassment can also include promises or threats for intimacy, both explicit and implied, or may be behaviour that suggests workplace advancement in return for inappropriate intimacy.

Examples of sexual harassment could include:

- Unwelcome and uncalled for remarks or innuendo about a person's private life
- Uninvited touching, kisses or embraces
- Physical contact such as patting, inching or touching in a sexual way
- Unnecessary familiarity such as deliberately brushing against a person
- Sexual jokes
- Offensive telephone calls, email messages, screen savers, computer graphics
- Displays of obscene or pornographic photographs pictures, posters, reading material
- Sexual propositions or repeated requests for dates
- Wolf whistles, cat calls, obscene gestures
- Stalking
- Indecent exposure

Sexual harassment is not behaviour based on mutual attraction friendship and respect.

It is **NOT** necessary for the harassed person to have told the harasser that his/her behaviour was unwelcome or offensive.

If the behaviour is consensual or welcome, it is not sexual harassment.



1. (b) Sexual Harassment and the law

Sexual harassment is against the law. Employers have the responsibility to provide sexual harassment-free workplaces. This includes dealing with complaints about inappropriate, offensive or sexualised behaviour by contractors or clients who may come into a workplace.

Section 62 (1) and (2) of the Human Rights Act 1993 and section 108 of the Employment Relations Act 2000 define sexual harassment. These sections are attached as Appendix 1 and Appendix 2.

1. (c) Effects of Sexual Harassment

Inappropriate or offensive behaviour at work is illegal and must be prevented because it could have serious consequences for all workplaces concerned. Generally, within 12 months of a serious allegation, all parties have left their employment and often other employees leave as well.

1. (d) Stopping it before it starts

The best way to deal with harassment in the workplace is to set up systems to prevent inappropriate behaviour and ensure that it does not happen in the first place.

- Check your collective agreement for sexual harassment protective clauses
- Check your employer's sexual harassment prevention programme.

There is much that employers can do to prevent sexual harassment occurring in the workplace. It is important that workplaces develop a strategy to combat all inappropriate behaviour, confront explicit sexual harassment and ensure their workplace strategy is well publicised.

See attached Appendix 3 and 4 for model sexual harassment prevention clauses and policies.

1. (e) Role of the employer:

Communicate the seriousness with which management views sexual harassment through:

- Having a written policy statement, made in conjunction with the Union.
- Informing staff of the employer's refusal to tolerate inappropriate behavior or sexual harassment.
- Making managers and supervisors aware of their responsibility to deal effectively with sexual harassment when they become aware of it.
- Taking prompt corrective action to avoid any possible problems, e.g. removing offensive material from the workplace.



Develop effective procedures for resolving complaints including:

- Communicating to all staff their right to make complaints and explaining in clear terms the options available to them
- Investigating complaints quickly, independently and thoroughly including taking disciplinary action where appropriate.
- Providing a confidential environment which does not inhibit staff from coming forward with complaints.
- Ensuring supervisors have training in sexual harassment prevention.
- Provide training for all staff in dealing with cases by providing sexual harassment awareness training for staff in induction courses and staff development courses and raising inappropriate behaviour and sexual harassment issues in supervision courses, personnel courses, counseling courses and middle management courses.
- Appointing and training sexual harassment prevention contact people to whom complainants, their colleagues or their supervisors may go to for advice.
- Providing appropriate instructions and training for all staff who have personnel and welfare responsibilities.

The role of the sexual harassment prevention Co ordinator is to:

- facilitate complaints of inappropriate behaviour and sexual harassment on the worksite.
- provide a policy with all appropriate information, co-ordinate training on sexual harassment for all new staff as a standard part of induction and regularly distribute and promote the sexual harassment policy at all levels of the organisation including where appropriate to clients.
- Ensure that the organisation has sufficient trained contact people able to respond sensitively to employees who seek advice on sexual harassment and inappropriate behaviour. Ideally, there will be contact people of both genders and from different cultures where appropriate.
- Ensure that all complaints are actioned according to the standards set out in the section on complaints procedures.
- Keep confidential records of all complaints to be used as the basis of a regular statistical report

The role of contact people:

- Is to know the processes, listen sensitively to the complaint or concern, provide support and information to complainants, answer any questions and advise complainants on their options.
- They can provide general information on inappropriate behaviour and sexual harassment and outline the employer's policy and procedures to any employee.
- Is to give confidential records of all complaints to the sexual harassment prevention coordinator to be used in the statistical report.



- They must respect the wishes of the complainant and treat the complaints and concerns confidentially and not discuss the situation with anyone else (other than the sexual harassment prevention coordinator) without the complainants permission.
- If they consider that someone's safety is at risk they should inform the complainant that they must discuss the matter with the sexual harassment prevention coordinator who will decide what steps need to be taken.
- They do not become involved in formal investigations or be active in the resolution of a complaint.

Role of the Union:

Unions should be encouraged to provide sexual harassment prevention training to all workers.

Union delegates on site may often be best placed in an organisation to become aware of and help deal with sexual harassment and inappropriate behaviour. The delegate can encourage the worker alleging such behaviour to contact the sexual harassment contact person or, if the worker is a member of the union, refer the matter to the Union organiser who may deal with it via the options in the complaints procedure.

If the person causing the trouble does not own the behaviour and the behaviour is not stopped the offender often goes on to harass the next person and the problem just continues.

1. (f) Dealing with it

The best way to deal with inappropriate behaviour and sexual harassment in the workplace is to set up systems to ensure that it does not happen in the first place. However, if harassment does occur here is a list of ways to deal with it from the onset of a complaint.

Complaints Procedure.

Workers who suffer inappropriate behaviour and consider themselves to be sexually harassed have the following **options** for dealing with the harassment, including first seeking assistance from another person.

Confronting the harasser.

In some cases this option may not be appropriate, for example, if the harasser intimidates the worker or if the unwelcome behaviour is serious.

If the harassed worker chooses they can take a witness, confront the person behaving in the inappropriate way and explain to the harasser their concerns, or write a letter to the harasser marked "Private and Confidential" and have it witnessed by another person. Ideally, the



harassed worker should explain clearly to the harasser how and why the behaviour is offensive and unacceptable and the effects it is having and ask that it stop. Advise the harasser that a complaint will be made if the behaviour continues.

Complaint to employer.

A worker who is being sexually harassed may feel more comfortable addressing this issue with the union delegate and/or union organiser or, if not in the union then a witness the worker chooses. The worker is then supported to get in touch with the appropriate sexual harassment contact person or the employer. Any worker who is being harassed has the right to make a formal complaint to the employer, contact person or coordinator. The employer or investigator nominated by the employer will obtain from the worker a detailed account of the allegations. The worker has a right to a support person when being interviewed.

Complaint using personal grievance

A worker who is being sexually harassed at work has the right to take a personal grievance against the employer under the Employment Relations Act. A personal grievance should be made within 90 days of the alleged harassment. The employer may be liable for the duty to prevent inappropriate behaviour or sexual harassment in the workplace. Alternatively the employer may be liable for the behaviour of a representative of the employer or a co-worker, client or customer of the employer. Note – you must choose at the outset which process – ERA or HRC as you cannot use both.

Complaint with the Human Rights Commission

If a worker is not satisfied with the outcome of making an internal complaint or does not wish to use the internal procedures, that worker may make a complaint within one year to the Human Rights Commission under Parts 2 and 3 of the Human Rights Act.

Complaint to the Police

Serious sexual harassment involving sexual or physical assault may come under the provisions of the Crimes Act. In such a case, a worker may lodge a complaint with the Police. The criminal standard of proof - beyond a reasonable doubt - applies. Hence the Police are often very reluctant to prosecute if there are no witnesses. The purpose of using this procedure is not to provide a remedy for the complainant but to bring the alleged harasser to justice and have him/her convicted and appropriately punished. Because the process is punitive and not remedial, a worker may take a personal grievance or a complaint to the Human Rights Commission, and/or a formal complaint to management as well as pursuing criminal action with the Police.



Part Two - Racial Harassment

2. (a) What is Racial Harassment?

Racial harassment is written or spoken words, visual material or physical behaviour that expresses hostility against, brings into contempt or ridicule, is hurtful and offensive, is repeated or significant and has a detrimental effect on that person's employment.

Racial harassment can include:

- Racist jokes
- Graffiti
- Verbal abuse
- Unwanted nicknames
- Posters, cartoons etc.
- Violence
- Comments or other behaviour that suggest one race is inferior
- Shunning a person because of his or her race
- Wearing or display of racist badges or insignia

2. (b) Racial Harassment and the law:

Human Rights Act Section 63 states that it is unlawful for anyone to use any behaviour that expresses hostility against or brings into contempt or ridicules someone on the basis of their: **Race, colour, national or ethnic origins.**



Part Three - Bullying or general harassment in the workplace.

3. (a) What is bullying or general harassment in the workplace?

There is no legal definition, and definitions in research literature are many and varied. Various sources recognise that a bully is someone who uses strength or power to unjustly put down others by fear or intimidation.

To bully is to oppress or persecute others physically or emotionally by (threat of) superior force. Bullying is physical or psychological behaviour or conduct where strength (including strength of personality) and/or a position of power is misused by a person in a position of authority or by someone who *perceives that they are in a position of power or authority*.

Elements of bullying are:

- Behaviour that is not legitimate or warranted in the circumstances and is unwanted by the receiver and is repeated, or of a significant nature, such as there is detrimental effect on the work environment or performance in some way.
- Bullying can be defined as any unwelcome comment, conduct or gesture that is insulting, intimidating, humiliating, malicious, degrading or offensive.
- Bullying is ongoing unreasonable behaviour which is often intended to humiliate or undermine the recipient.

Bullying behaviour may include:

- **Visual:** Pictures/ posters or written words in any media.
- **Verbal:** Jokes, comments, innuendo, invitations, remarks, swearing, yelling, taunts, mocking, verbal abuse, name calling, mimicking,
- **Physical:** staring in an intimidatory way, picking on, abuse, attack, assault, stalking, threatening gestures like cutting throat or gun to head.
- **Other forms of harassment and bullying:**
Exclusion from a group, ridicule, ostracisation, unfair workload, threats of detrimental treatment, promises of preferential treatment, setting impossible deadlines, humiliating and demanding conduct in front of others.



3. (b) Bullying and the law

Legislation and liability

In New Zealand employers are obliged to create and maintain a safe and secure working environment for their employees and take all reasonable practicable steps to manage and avoid exposing employees to hazards. The Human Rights Act states that it is unlawful for anyone to use any behaviour that expresses hostility against or brings into contempt or ridicules someone on the basis of their:

Sex, Marital Status, Religious Belief, Ethical Belief, Race, Colour, National Or Ethnic Origins, Disability, Age (16 And Over) Political Opinion, Employment Status, Family Status, Sexual Orientation.

There are some exemptions and some examples of discrimination which may be justified or not unlawful so check with your Union, your legal adviser or check on line www.hrc.co.nz or www.dol.govt.nz/er

3. (c) What can you do if you are being bullied at work?

1. Informal - Seek advice

Speak to your Union Delegate/Organiser, contact person, Manager and or Human Resources Advisor.

To find your union, call NZ Council of Trade Unions 0800 698 6466 (0800myunion) or website: www.union.org.nz/findyourunion

2. Formal - Remember your Union Organiser can assist you with these formal processes.

- Raise the bullying or harassment issue with a contact person, Manager or Human Resources Advisor which could lead to using the in-house procedures (formal or informal)
- If not satisfied with the outcome you can lodge a Personal Grievance under the Employment Relations Act 2000 - info line 0800 20 90 20 or Human Rights Act 1993 under the Human Rights Commission - info line 0800 496 877

3. High Level Formal -

A lawyer can advise over protection orders, damages, restraining orders etc. Criminal action is limited to rape, assault, molestation, abuse of telephone, criminal action etc.



Part Four - Discrimination

4. (a) What is Discrimination?

Discrimination is unwanted and offensive verbal or physical behaviour which is not legitimate and which has a detrimental effect in the workplace. It may be based on sex/gender, including pregnancy and childbirth, sexual orientation, disability, age, religious or ethical belief, political opinion, marital status, family status, employment status, race, colour, national or ethnic origins.

4. (b) Discrimination and the law

The Human Rights Act 1993 makes harassment and discrimination unlawful when it occurs in: education, employment, access to public places, provision of goods and services, provision of housing and accommodation. **The Employment Relations Act 2000** makes this unlawful in employment.

Part Five - What is not harassment?

- Occasional differences of opinion, conflicts and problems in working relations are a part of working life and do not constitute bullying or harassment.
- Workplace counselling, managing underperformance, or other legitimate action in accordance with departmental policy and procedures, are not bullying or harassment.
- Specific types of non-harassment are: friendly banter, mutually acceptable jokes and compliments, friendships, sexual or otherwise, where both people consent to the relationship.
- Assertively expressing opinions that are different from others.
- Issuing reasonable instructions and expecting them to be carried out.
- Insisting on high standards of performance in terms of quality and timeliness of work.
- Legitimate criticisms about work performance, (not expressed in a hostile, harassing manner), including a performance appraisal, and requiring justified performance improvement.
- Warning or disciplining someone in line with organisation policy.
- Targeted affirmative action policies, or reasonable accommodation and provision of work aids for staff with disabilities.



APPENDICES

Appendix 1: Human Rights Act 1993 (section 62 and 63)

(See www.legislation.govt.nz or visit the WWRC website www.wwrc.org.nz for link to latest version)

Human Rights Act 1993 Number 82 as at 1 May 2011 Clause 62 Sexual harassment

(1) It shall be unlawful for any person (in the course of that person's involvement in any of the areas to which this subsection is applied by subsection (3)) to make a request of any other person for sexual intercourse, sexual contact, or other form of sexual activity which contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment.

(2) It shall be unlawful for any person (in the course of that person's involvement in any of the areas to which this subsection is applied by subsection (3)) by the use of language (whether written or spoken) of a sexual nature, or of visual material of a sexual nature, or by physical behaviour of a sexual nature, to subject any other person to behaviour that—

- (a) is unwelcome or offensive to that person (whether or not that is conveyed to the first-mentioned person); and
- (b) is either repeated, or of such a significant nature, that it has a detrimental effect on that person in respect of any of the areas to which this subsection is applied by subsection (3).

(3) The areas to which subsections (1) and (2) apply are—

- (a) the making of an application for employment:
- (b) employment, which term includes unpaid work:
- (c) participation in, or the making of an application for participation in, a partnership:
- (d) membership, or the making of an application for membership, of an industrial union or professional or trade association:
- (e) access to any approval, authorisation, or qualification:
- (f) vocational training, or the making of an application for vocational training:
- (g) access to places, vehicles, and facilities:
- (h) access to goods and services:
- (i) access to land, housing, or other accommodation:
- (j) education.

(4) Where a person complains of sexual harassment, no account shall be taken of any evidence of the person's sexual experience or reputation.



Human Rights Act 1993 Number 82 as at 1 May 2011 Clause 63 Racial Harassment

- (1) It shall be unlawful for any person to use language (whether written or spoken), or visual material, or physical behaviour that—
 - (a) expresses hostility against, or brings into contempt or ridicule, any other person on the ground of the colour, race, or ethnic or national origins of that person; and
 - (b) is hurtful or offensive to that other person (whether or not that is conveyed to the first-mentioned person); and
 - (c) is either repeated, or of such a significant nature, that it has a detrimental effect on that other person in respect of any of the areas to which this subsection is applied by subsection (2).

- (2) The areas to which subsection (1) applies are—
 - (a) the making of an application for employment;
 - (b) employment, which term includes unpaid work;
 - (c) participation in, or the making of an application for participation in, a partnership;
 - (d) membership, or the making of an application for membership, of an industrial union or professional or trade association;
 - (e) access to any approval, authorisation, or qualification;
 - (f) vocational training, or the making of an application for vocational training;
 - (g) access to places, vehicles, and facilities;
 - (h) access to goods and services;
 - (i) access to land, housing, or other accommodation;
 - (j) education



Appendix 2: Employment Relations Act 2000 (section 108)

Clause 1 and 2 section 108 Sexual harassment

(See www.legislation.govt.nz or visit the WWRC website www.wwrc.org.nz for link to latest version)

(1) For the purposes of sections 103(1)(d) and 123(d), an employee is *sexually harassed in that employee's employment* if that employee's employer or a representative of that employer—

- (a) directly or indirectly makes a request of that employee for sexual intercourse, sexual contact, or other form of sexual activity that contains —
 - (i) an implied or overt promise of preferential treatment in that employee's employment; or
 - (ii) an implied or overt threat of detrimental treatment in that employee's employment; or
 - (iii) an implied or overt threat about the present or future employment status of that employee; or
- (b) by—
 - (i) the use of language (whether written or spoken) of a sexual nature; or
 - (ii) the use of visual material of a sexual nature; or
 - (iii) physical behaviour of a sexual nature,—

directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee (whether or not that is conveyed to the employer or representative) and that, either by its nature or through repetition, has a detrimental effect on that employee's employment, job performance, or job satisfaction.

(2) For the purposes of sections 103(1)(d) and 123(d), an employee is also *sexually harassed in that employee's employment* (whether by a co-employee or by a client or customer of the employer), if the circumstances described in section 117 have occurred.



Appendix 3: Model Harassment Clause

The parties to this collective agreement acknowledge that harassment in the workplace is totally unacceptable;

Harassment is: Verbal, written, visual or physical conduct in relation to race, colour, ethnic or national origin, gender, age, disability, marital or family status, religion, ethical belief, political opinion, sexual orientation or health status and is: Unwelcome and offensive or might reasonably be felt as unwelcome and offensive:

Or, the conduct is of a serious nature or is repeated to the extent that it has a damaging effect on the conditions of any individual's employment, job performance or opportunities.

Sexual harassment is defined as any form of unwelcome sexual attention or sexually oriented activity that persists or is significant to the point of making an employee uncomfortable, annoyed, upset or distressed.

If employees believe that they have been the subject of harassment by another employee or a customer or a client of the company, then they should follow the company policy.

(Source: NZ Amalgamated Engineering, Printing and Manufacturing Union Inc)



Appendix 4: Model Harassment Statement

(Insert workplace name here) is committed to ensuring that all staff are treated fairly and with dignity and respect. In particular, *(insert workplace name here)* aims to ensure that its work environment and provision of service is free of harassment. Harassment is unlawful and will not be tolerated. Harassment constitutes misconduct. Any staff member found to have harassed another staff member or a client of *(insert workplace name here)* will be liable for disciplinary action ranging from an oral warning to instant dismissal, in cases of serious harassment.

Harassment is any unwanted comment, conduct or gesture directed toward an individual or a group of individuals which is insulting, intimidating humiliating malicious, degrading or offensive, and is either repeated or an isolated incident which is so significant that it adversely affects someone's performance, contribution or work environment. Harassment is a form of discrimination.

(Insert workplace name here) is committed to implementing a programme and procedures, which will:

- Ensure that management and staff have a detailed understanding of what harassment is:
- Ensure that management and staff know their rights and responsibilities
- Treat any complaints sensitively and seriously
- Provide an effective procedure for complaints based on the principles of natural justice and
- Guarantee protection for victimisation to anyone making a complaint

(Source: Waitakere City Council)





Harassment and Discrimination

a guide to your rights

Advice about dealing with
Sexual Harassment
Racial Harassment
Bullying



Produced by the Working Women's Resource Centre (WWRC).
www.wwrc.org.nz
Private Bag 68914, Newton, Auckland, New Zealand

With funding from the New Zealand Lotteries Grants Commission

ACKNOWLEDGEMENTS

We have drawn the information in this workbook from a variety of places and make the following grateful acknowledgements to:

- Jan Eggleton JETNet- Working with hard cases. Preferred training provider of the Human Rights Commission
- Top Drawer Consultants: Dealing with Bullying in the Workplace seminar workbooks.
- EEO Trust website - www.eeotrust.org.nz
- The Human Rights Commission website www.hrc.co.nz
- Department of Labour - www.dol.govt.nz
- Waitakere City Council (now part of Auckland Council).
- The NZ Amalgamated Engineering, Printing and Manufacturing Union, Inc for their partnership in producing our previous booklet on Sexual Harassment - "Stop it Before it Starts"

Disclaimer

This booklet is one part of an harassment/bullying prevention training package. It is not intended that this booklet be used in isolation, but rather as part of a whole harassment/bullying prevention training package. This booklet is not intended as legal advice. No reader of this book should act on the basis of any matter in it without considering and if necessary taking appropriate professional advice about this or her own particular circumstance. The publishers, authors and copy editors disclaim all and any liability to any person whether a purchaser of this publication or not, in all respects, particularly in the consequences of anything done or omitted by any person in reliance, whether whole or partial, upon the whole or any part of the contents of this publication.