COMMUNICATIONS WORKERS' UNION



STAMP OUT SEXUAL HARASSMENT

A TOOLKIT FOR MEMBERS

Foreword

The CWU opposes all forms of workplace discrimination, and this includes sexual harassment. Sexual harassment in the workplace is not only unacceptable, it is also illegal and must be treated with all due severity. As part of our commitment to the well-being of our members, the CWU has developed our "Stamp out Sexual Harassment" campaign. The campaign includes toolkits for members and their representatives to assist in identifying what sexual harassment is, its impact on individuals, how to make a complaint, as well as defining the remedies that are in place to protect workers.

Through our campaign we strive to ensure that members have the confidence to speak up if affected in any way by sexual harassment and to get the supports that they need. Our campaign also assists our representatives by providing - them with information, training, and guidance when addressing sexual harassment issues.

Employment Equality Legislation, as well as the Code of Practice on Sexual Harassment and Harassment at Work issued by the Irish Human Rights and Equality Commission have been in place for some time. The legislation and the Code of Practice aim to protect and provide guidance to employees within the context of sexual harassment.

We are aware that despite years of protective legislation, good practice measures and movements such as #Metoo, we see the continued occurrence of sexual harassment in the workplace. This tells us that these measures alone cannot eradicate sexual harassment and that it will require the joint efforts of Trade Unions, employers and employees.

Our Trade Union seeks to effectively prevent sexual harassment by creating working environments that support the dignity of our members and representatives.

The CWU "Stamp Out Sexual Harassment" Campaign has been created with the following aims:

- to help members and Trade Union representatives identify what sexual harassment is;
- to know how complaints should be dealt with;
- to understand its impacts and effects and;
- to prevent sexual harassment and protect workers.

This toolkit has been designed for members who have queries or concerns around sexual harassment. It addresses all the key issues such as identifying sexual harassment, liaising with Union representatives, addressing complaints and getting the necessary supports.

UNDERSTANDING SEXUAL HARASSMENT

The Employment Equality Act 1998-2015 (EEA) defines sexual harassment as 'any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of violating a person's dignity and creating an intimidating, degrading, humiliating or offensive environment for the person.'

Therefore, sexual harassment is not just a physical act but can take many forms. Also, in civil/employment law, a single incident on its own may constitute sexual harassment, therefore the behaviour itself does not have to be repeated.

Overall, the conduct must be unwanted by the affected individual. Furthermore, the fact that an individual has previously acceded to the behaviour does not stop them from deciding that it has become unwelcome. It is the unwanted nature of the conduct which distinguishes sexual harassment and harassment from behaviour, which is welcome and mutual.

Under equality law, employees are protected from harassment conducted by one's employer, co-workers, clients/customers, service users and business contacts, including other parties the employee may come in contact with during the course of their duties.

Examples of Sexual Harassment

Sexual harassment can take many forms. The aforementioned 'Code of Practice' on this subject offers a useful (non-exhaustive) list of examples of sexual harassment at work. They include:

Physical conduct of a sexual nature: this may include unwanted physical contact such as unnecessary touching, patting, or pinching or brushing against another employee's body, assault and coercive sexual intercourse;

Verbal conduct of a sexual nature: this includes unwelcome sexual advances, propositions, or pressure for sexual contact, continued suggestions for social contact outside the workplace after it has been made clear that such suggestions are unwelcome, unwanted, or offensive, suggestive remarks, innuendo or lewd comments, graffiti, written materials, emails, text messages or social media posts;

Non-verbal conduct of a sexual nature: this may include the display of pornographic or sexually suggestive pictures or objects. It may also include stalking, indecent exposure, leering, whistling, or making sexually suggestive gestures; and

Gender-based conduct: this includes conduct that denigrates or is abusive of an employee for reasons related to his or her sex such as derogatory or degrading abuse or insults which are gender based. This might include conduct that insults or degrades an employee because she is pregnant or because s/he is transgender.

Sometimes sexual harassment is not obvious and the IHREC has provided the following example.

A woman working in a hotel complained about a male co-worker who treated her in a sexist manner.

She said she was called offensive terms, laughed at and excluded from conversations. The Labour Court decided that this treatment was sexual harassment because it was a direct result of the man's negative views towards women.

It decided that the employer was responsible for the sexual harassment even though none of the actions could be described as sexual.

HOW AM I PROTECTED BY THE LAW?

Employment Equality legislation protects employees from employment-related sexual harassment and harassment based on one or more of the following prohibited grounds:

- **Gender (e.g. male, female, transgender. Also covers persons who are treated less favourably due to pregnancy or taking maternity leave);**
- **Civil status (single, married, separated, divorced, widowed or in a civil partnership);**
- **Family status (e.g. pregnant, parent or carer);**
- **Sexual orientation (e.g. heterosexual, homosexual or bisexual);**
- **Age (for people aged 18 or over);**
- **Religious belief (including religious background and those who have no religious beliefs);**
- **Membership of the Traveller community;**

- Race (colour, nationality, ethnic or national origin);
- Disability (intellectual, mental or physical).

Sexual harassment means unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work.

WHAT MUST MY EMPLOYER DO?

Employers have a duty of care towards their employees and are liable for staff actions during employment. In effect, the employer is legally responsible for harassment suffered by employees in the course of their employment, unless the employer took reasonable steps to prevent it, to reverse the effects of it and to stop its recurrence.

The employer should have a policy and procedures in place to deal with sexual harassment, and these should be agreed with the CWU as appropriate. These policies and procedures must be fully implemented in an effective way to address complaints made.

Furthermore, if the employer becomes aware of sexual harassment without a complaint being made, it still has a duty to act in the absence of a complaint.

The CWU also believes that all management should be fully trained to deal with sexual harassment and that complaints, policies and procedures be monitored on a regular basis, to ensure that they are up-to-date vis-à-vis equality law, the associated Code of Practice and Court Case precedents.

WHO IS AFFECTED BY SEXUAL HARASSMENT AND WHAT ARE THE EFFECTS?

Anybody can experience sexual harassment, irrespective of age, gender, race and so on and it has serious consequences for people. Sexual harassment can cause anxiety, stress, depression, poor performance, and low workplace morale, all of which may lead the employee to take time off work.

If this is prolonged, they may miss out on training, promotion and other workplace opportunities. They may even feel they have no option but to leave their job altogether.

Sexual harassment may also have a damaging impact on employees who are not themselves directly the subject of sexual harassment, but who also experience a workplace culture where sexual harassment is normalised and undermines the dignity of workers.

WHEN AND WHERE SEXUAL HARASSMENT CAN OCCUR

The law against harassment and sexual harassment in employment also applies to work-related activities, such as conferences, training events, office parties and social media platforms.

So, even though the actions are outside working hours or outside the workplace, they may still be covered once they are work-related events.

WHAT TO DO IF YOU ARE BEING SEXUALLY HARASSED

If you are being sexually harassed, you do not have to tolerate it and should speak up against it. You may even find that other people have suffered the same treatment. Make your position clear to the offending party and seek advice.

In the first instance, you may wish to deal with sexual harassment informally, in which case you should tell the alleged perpetrator to stop.

If you find this difficult to do alone, you may seek support from your CWU Representative, and they will provide confidential support, and relevant information regarding how to deal with this problem.

It is strongly recommended that complainants of workplace sexual harassment keep a record of any instances that occur. For example, recording the time, date, location, a detailed description of what happened, what was said, how it made you feel, including a note of any witnesses who may have heard or seen the sexual misconduct. You may use the sexual harassment incident log at the end of the toolkit to assist you.

Also, if there are any witnesses, you should also ask them to make a log, along similar lines.

Furthermore, it is important and useful to record any actions you may have taken to address the problem, for example raising it with a manager and the responses/actions taken afterward. This information will prove useful for making formal reports or any legal claims, as appropriate.

WHAT IF THE PERSON COMPLAINED OF SAYS IT WAS ONLY A JOKE, OR I MISUNDERSTOOD THEIR INTENTION?

The intention of the person is irrelevant as, again, it is for the individual to decide what is unwelcome.

There can be a lot of banter in the workplace with no intention towards sexual harassment, however, this is not a defence for behaviour that is deemed offensive or unwelcome. You should focus on how the behaviour or comments made you feel and address the issue from there.

The fact that an individual has previously agreed to the behaviour does not stop them from deciding that it has now become unwelcome. It is the unwelcome nature of the conduct which distinguishes harassment from friendly behaviour which is welcome and mutual. The conduct at issue may not be specifically directed at a particular employee but nevertheless has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. Where a person finds any behaviour unwelcome, they should point this out to the alleged perpetrator, if possible.

Furthermore, the intention of the alleged perpetrator is irrelevant. The fact that the alleged perpetrator has no intention of harassing an employee is no defence. The effect of the behaviour on the employee is what is important.

IF I MAKE A COMPLAINT WILL MY EMPLOYER TREAT ME LESS FAVOURABLY?

Employment Equality legislation protects you against victimisation by your employer for making a complaint of sexual harassment or if you are supporting a complainant.

This means that your employer may not penalise you by dismissal, diminish your working conditions or treat you unfavourably.

WHAT WILL HAPPEN IF THERE IS A FORMAL INVESTIGATION?

If you feel that the informal approach is not an option or has not been successful, you may wish to make a formal complaint. Again, you should speak to your local CWU representative about the formal process.

You should read your company policy to review the investigation policy and procedures and address any questions to your Union representative. Your representative can explain the process and attend investigation meetings with you.

Once the investigation is complete, the investigators having considered all the evidence and representations made, should produce a written report to be issued to both parties outlining their findings and the reasons for its final decision. If you wish to make a case externally outside of your workplace (e.g. to the Workplace Relations Commission), you should contact Union Head Office.

SEXUAL HARASSMENT VS SEXUAL ASSAULT

Sexual assault consists of intentionally touching an individual without consent, and this includes rape, attempted rape, unwanted sexual touching as well as sexual threats. This can be reported to the Gardaí as per the website below.

https://www.garda.ie/en/crime/sexual-crime/

We have also provided a contact list at the end of this document for further supports.

WHAT TO DO IF YOU ARE A WITNESS TO SEXUAL HARASSMENT

Witnessing sexual harassment must also be taken very seriously, as it can be both intimidating and uncomfortable to see this behaviour. In fact, conversations of a sexual nature between individuals at work can amount to the sexual harassment of a person who was not part of the actual conversation but overheard it in the course of their duties and found it offensive.

If you are in a situation where you have witnessed sexual harassment, you can take the following actions:

- Tell the person that you find their behaviour offensive and ask that it stop.
- Talk to the person you believe is experiencing harassment, to make them aware that you have witnessed the incident.
- Seek advice and support from your local CWU representative.
- Report the incident to line management, as it is important that a safe and respectful work environment is promoted.
- Make a note of what's happened including dates, time or any other witnesses. You can use the Sexual Harassment Incident Log Form for this purpose.

WHAT HAPPENS IF I AM SEXUALLY HARASSED AT A UNION EVENT?

The Union takes all incidents of sexual harassment very seriously. We have a Code of Conduct to address complaints of this nature which is available from Union Head Office. You can seek additional assistance from your local Union Representative or Union Head Office as required.

MAKING A CLAIM UNDER EQUALITY LEGISLATION

The Workplace Relations Commission (WRC) is the main body (but not the only one) that investigates or mediates unlawful discrimination, including sexual harassment claims, under the Employment Equality Acts 1998 to 2015. You can use the WRC's online complaint form for this purpose.

We recommend that members advise their employer about any sexual harassment that they are experiencing. Complaints should preferably be made internally first using the company complaints procedure before making a complaint to the Workplace Relations Commission (WRC) or the Circuit Court.

If it is not feasible, or you believe the complaint process is taking too long, then you will need to outline this to the WRC or the Court when your case commences.

It is also very important to note that you must lodge your complaint with the WRC within 6 months of the occurrence of sexual harassment regardless of the roll-out of the internal complaints' procedure.

Further information can be found through Citizens Information here: equality and discrimination disputes.

The following from the Irish Human Rights and Equality commission is also a useful source of information: https://www.ihrec.ie/factsheets/harassment-and-sexual-harassment-at-work

Advice can also be sought through CWU Head Office. (https://www.cwu.ie/contact-us/)

Note: Please note that while every effort is made to ensure the content is accurate, the CWU does accept liability for any loss resulting from inaccuracies or errors contained therein. Furthermore, the content of this document does not provide a legal interpretation of any of the referenced Acts. At all times you should refer your concerns to the relevant Union Representative for further guidance.

SEXUAL HARASSMENT INCIDENT LOG FORM

Our advice to members and witnesses is to keep a record of complaints as soon as they arise.

Keeping a written log will assist you in tracking important details and dates so that you can effectively form a complaint of sexual harassment to your employer, make a complaint to a third party (where warranted) or offer appropriate assistance should you be a witness to the incident(s).

We have developed the following template so that you can document what happened with the relevant information including the dates, times, locations, details of any incidents, if there were any witnesses or any supporting documentation.

It can also be helpful to write down how the incident made you feel at the time and what effect it had on you.

You can use a separate sheet of paper for further elaboration or photocopy the template on the next page for each separate allegation. You can also download the template from our website.



SEXUAL HARASSMENT INCIDENT LOG FORM

Date of Incident:	
Time:	
Location:	
Name of person(s) complained of:	
Detail of Incident (e.g. offensive comment(s)/conversation(s), looking/leering, sexual contact incl. touching, inappropriate messages at work via Email, FB, WhatsApp, X, BlueSky, Instagram etc.). Please provide as much detail as possible:	
Names of any witnesses.	
List of any supporting evidence (e.g. e-mails, text messages, CCTV or other documentation):	
What did you say and/or do following the incident? Did you report the incident or talk to anyone about it?	
What effect did the incident have on you (i) at the time? (ii) afterwards?	

SOURCES OF FURTHER INFORMATION AND SUPPORT

Members requiring information and/or further support following experiences of sexual harassment, sexual assault or rape can contact one or more of the sources listed below.

You may also wish to engage with your organisation's Employee Assistance Programme as appropriate.

Cosc: The National Office for the Prevention of Domestic, Sexual and Gender-based Violence cosc.ie

Crime Victims Helpline - www.crimevictimshelpline.ie / Freephone 116 066

Dublin Rape Crisis Centre - national 24-hour helpline Freephone 1800 778888
www.drcc.ie /

Rape Crisis Network Ireland - www.rcni.ie / local centres www.rapecrisisireland.ie/find-help/

Men's Aid - mensaid.ie
National Confidential Helpline – 01 554 3811
Email – Hello@mensaid.ie

Samaritans - www.samaritans.org / 24-hour helpline Freephone 116 123

Sexual Assault Treatment Unit services - https://www2.hse.ie/services/satu/

Women's Aid - https://www.womensaid.ie/

The Communications Workers' Union (CWU) Ireland would like to thank the Communications Workers' Union UK and Union Network International Global Union (UNI Global Union) for their inputs and assistance in drawing up this toolkit for CWU members in Ireland.

This document will be monitored on a regular basis to reflect best practice and any changes in relevant legislation.

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