



# **Sexual Harassment:**

What you need to know.



**NZ**  
**Human**  
**Rights.**



The Human Rights Commission offers a free, confidential service for anyone enquiring or complaining about discrimination, racial or sexual harassment.

This guide explains how we deal with sexual harassment complaints. However, it should not be regarded as legal advice.

If you have any questions, please call us on **0800 496 7877**.



## What is sexual harassment?

The Human Rights Act 1993 (the Act) defines sexual harassment as any unwelcome or offensive sexual behaviour that is repeated, or is serious enough to have a harmful effect, or which contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment.

Sexual harassment can involve spoken or written material, images, digital material or a physical act.

Areas where the Act protects people from sexual harassment include:

- Employment (including unpaid work)
- Education and vocational training
- Provision of goods and services
- Land, housing and accommodation
- Access to public places, vehicles and facilities
- Government services.

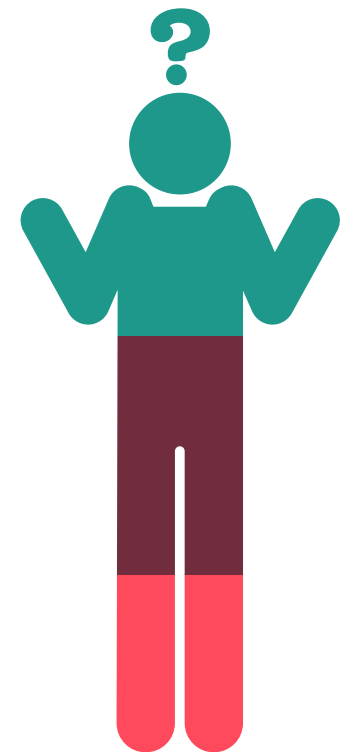
The Harmful Digital Communications Act 2014 (HDC Act) makes sexual comments or behaviour in digital form (online) unlawful.

## Have I been sexually harassed?

The following are examples of sexual harassment:

- offensive sexual remarks or jokes in your workplace or school
- implied or actual threats of being overlooked for work opportunities or promotion if you say no to your boss's advances
- unwelcome touching, patting, or pinching by your boss, co-worker or customer
- unwelcome sexual advances from your landlord
- unusually low marks or grades after rejecting your teacher or lecturer's advances
- regular hassling for a date or being followed home by a co-worker
- unacceptable sexual behaviour by your counsellor, doctor or lawyer
- sexually offensive images in the workplace, including screen savers of a sexual nature
- intrusive questions about your sex life.

Even if the sexual harassment is unintentional, and the person who is being offensive is unaware of its effect, they can still be held responsible. What's important is how the behaviour affects you.



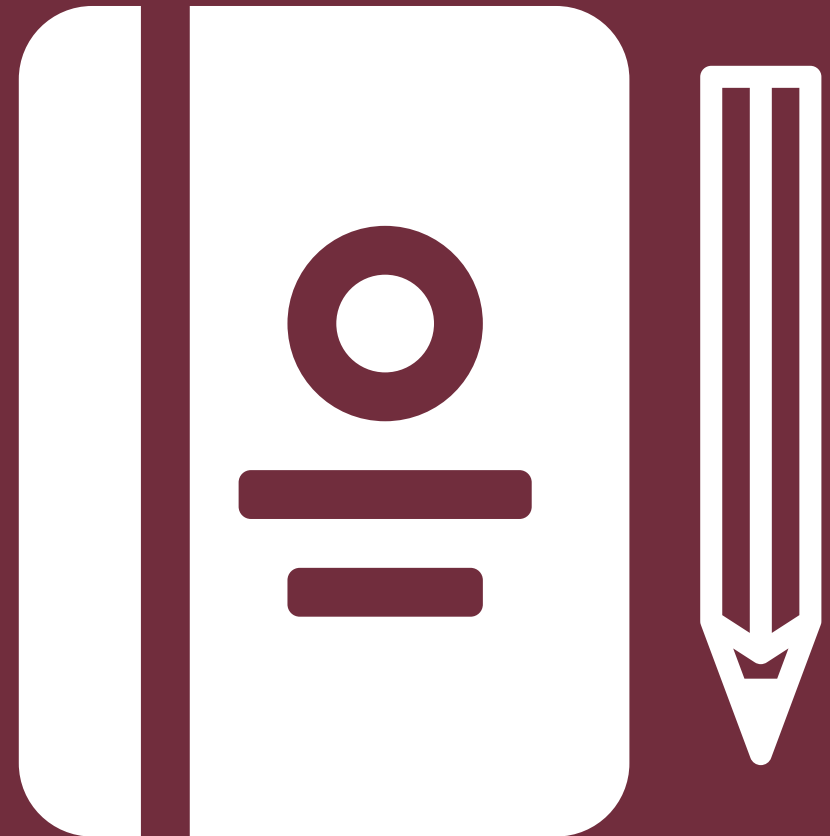
# What can I do about sexual harassment?

At first, you might want to deal with it yourself by confiding in someone you trust who will keep the information confidential. Or by keeping a record of incidents you find offensive.

You can also raise it directly with the person or people involved, either face to face or in writing. You can have a friend, family member or other support person present when you talk to the people involved.

If these suggestions don't work or you feel uncomfortable doing them, you can get advice from a number of people:

- a sexual harassment contact person at work
- a manager or school counsellor
- your union delegate or a lawyer
- a professional disciplinary group (such as the Health Practitioners Disciplinary Tribunal)
- the Human Rights Commission
- the Ministry of Business, Innovation and Employment (MBIE) if you have been harassed at work
- the Police (for sexual assault)
- a Community Law Centre.





## Who can I complain to?

You can complain directly to the Human Rights Commission or do so through a lawyer, advocate, union representative or, if you are a child, a parent.

If you've been sexually harassed at work, you can choose to complain to either the Human Rights Commission (0800 496 877) or to the Ministry of Business, Innovation and Employment (0800 20 90 20). Note that the process is slightly different between the two:

- If you complain to the Human Rights Commission you have at least twelve months in which to do so
- If you lodge a grievance with the Ministry of Business, Innovation and Employment, you must do so within a 90 day period of when the harassment happened.

**If the sexual harassment involves assault or violence, you can get help from the Police.**

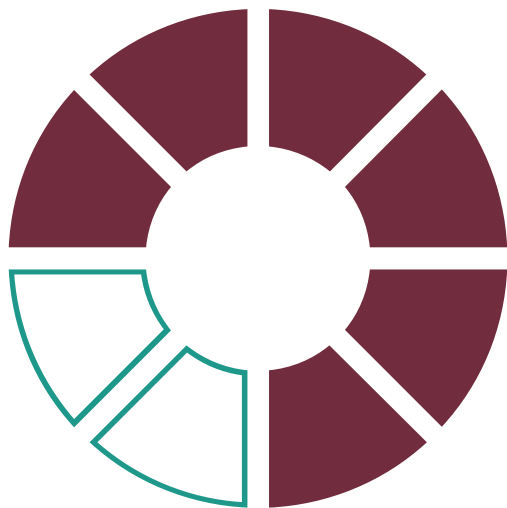
## Why it's important to act

Sexual harassment may be repeated unless action is taken and it may affect your ability to work or study. It can also affect self-esteem and lead to health problems.

Others may have experienced what you've gone through but felt unable to act. Employers have a responsibility to prevent harassment and to respond to complaints, including complaints about their employees or clients.

The Act protects people from being victimised for making a complaint.





# How does the complaint process work?

The complaint process is private and confidential for everyone involved. It enables people to discuss the issues in an impartial, open and constructive way and assists the parties in reaching a fair and mutually agreed resolution.

## Step One: **Contact our Infoline team**

It's safe and confidential. The team will listen to you, ask questions and if appropriate, give you a complaint form to complete.

Phone 0800 496 877 or email [Infoline@hrc.co.nz](mailto:Infoline@hrc.co.nz) or visit [www.hrc.co.nz](http://www.hrc.co.nz)

## Step Two: **Mediator referral**

If it looks like an issue of unlawful sexual harassment, you'll be referred to one of our mediators. They can provide information to help you resolve your complaint. This step might involve notifying the other party of your complaint, if you agree to that.

## Step Three: **Mediation**

A mediator notifies the other party to let them know a complaint has been made about them. If you and the person you're complaining about agree to a mediation meeting, it may include explaining people's rights and obligations under the Human Rights Act and working through possible solutions. It's confidential and impartial. The mediator does not make decisions on the complaint, they facilitate the mediation meeting.

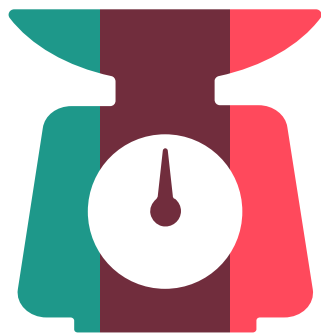
## Step Four: **Resolution**

Most sexual harassment complaints are settled by mediation. Resolution can include an apology, an agreement not to do the same thing in the future, a training programme or compensation.

## Step Five: **Legal Action**

If your complaint isn't resolved at mediation, you can take legal action. Human rights complaints are heard before the Human Rights Review Tribunal, which is like a court. You can apply for free legal representation.

**Not all sexual harassment complaints will end up going through every stage of this process.**



## What if I've received a complaint of sexual harassment?

If a complaint has been made against you, you'll be sent a letter outlining the complaint. The letter will invite you to take part in the Commission's mediation process (see 'How does the complaint process work').

The Commission makes no judgement about what may have happened. Our function is to mediate confidentially and impartially. Both the Human Rights Act (1993) and the Employment Relations Act (2000) make sexual harassment a form of unlawful discrimination.

If the matter can't be resolved through the dispute resolution process, the person who lodged the complaint (the complainant) has the right to take the matter to the Human Rights Review Tribunal, either directly or by seeking representation from the Director of the Office of Human Rights Proceedings.

## How employers should deal with sexual harassment complaints - your obligations

Sexual harassment is unlawful under the Human Rights Act (1993) and the Employment Relations Act (2000), so it is vital that employers know and understand their statutory obligations. It's also important to have policies and procedures in place aimed at preventing sexual harassment.

Along with your own behaviour, employers are also responsible for the behaviour of all employees, customers and clients. A sexual harassment complaint can be made if a particular employee finds something sexually offensive, even if other employees are not offended.

# Zero tolerance

As an employer you need to make sure all employees know that sexual harassment will not be tolerated. If sexual harassment does happen, there must be someone in the organisation the employee can complain to and a procedure for achieving a resolution.

Nobody should be subject to any unfair treatment because a sexual harassment complaint has been made.

It's important to remember that sexual harassment complaints are subjective. What matters is what offends the individual, and that person doesn't have to tell the offender that the behaviour was unwelcome or offensive.



## Your written policy

All employers should have a written policy statement advising employees that sexual harassment is unlawful and will not be tolerated. The policy should give examples of what constitutes sexual harassment and should point out that appropriate measures will be taken against anyone who offends.

Policy statements should set out an employee's right (under both the Human Rights Act and the Employment Relations Act) to complain about sexual harassment along with initial in-house procedures to follow if a complaint is made.



## Your complaint procedure

Having a correct procedure for investigating an initial complaint of sexual harassment is very important. How you handle, or fail to handle, an investigation may be critical to resolving a complaint under the Human Rights Act or a personal grievance under the Employment Relations Act.



## Section 62 of the Human Rights Act 1993

Section 62 of the Human Rights Act provides a basis for analysing whether or not sexual harassment has happened. It's worth noting that the definition of "employer" is very broad, extending to "employees" of independent contractors as well as unpaid workers.

# 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:

- (k) participation in fora for the exchange of ideas and information.

(4)

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

Section 62(3)(k): inserted, on 3 July 2015, by section 37 of the Harmful Digital Communications Act 2015 (2015 No 63).

## Get in contact

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For more information or to make a complaint under the Human Rights Act call **Infoline** on **0800 496 7877** (toll free).

**It's free, confidential and you don't need a lawyer.**

Fax: **09 377 3593 (Attn: Infoline)** Website: **[hrc.co.nz](http://hrc.co.nz)**