

Sample Sexual Harassment Policy

[Explanatory note: This sample sexual harassment policy is intended for use by private and public employers to help them develop their own sexual harassment policies. It is based on international good practices and includes all the components which make a sexual harassment policy comprehensive. As such, it is not intended to be a collection of clauses from which employers can pick and choose. Instead, any effective policy must include most if not all of the content of this sample policy. Organisations should of course modify certain clauses to meet specific conditions within their organisations. Please also note, please have your own legal advisor review the policy you develop from this to ensure it complies with your position as an employer]

The Policy Statement

[Name of Company] is committed to providing a safe environment for all its employees free from discrimination on any ground and from harassment at work including sexual harassment. [Name of Company] will:

- operate a zero-tolerance policy for any form of sexual harassment in the workplace,
- treat all incidents seriously and
- promptly investigate all allegations of sexual harassment.

Any person found to have sexually harassed another will face disciplinary action, up to and including dismissal from employment. All complaints of sexual harassment will be taken seriously and treated with respect and in confidence. No one will be victimised for making such a complaint.

[Explanatory note: This explains in broad terms what the policy is about and sets out the intention of the organisation in adopting the policy.]

Definition of sexual harassment

Sexual harassment is unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated. It includes situations where a person is asked to engage in sexual activity as a condition of that person's employment, as well as situations which create an environment which is hostile, intimidating or humiliating for the recipient. Sexual harassment can involve one or more incidents and actions constituting harassment may be physical, verbal and non-verbal. Examples of conduct or behaviour which constitute sexual harassment include, but are not limited to:

Physical conduct

- Unwelcome physical contact including patting, pinching, stroking, kissing, hugging,
- fondling, or inappropriate touching

- Physical violence, including sexual assault
- Physical contact, e.g. touching, pinching
- The use of job-related threats or rewards to solicit sexual favours

Verbal conduct

- Comments on a worker's appearance, age, private life, etc.
- Sexual comments, stories and jokes
- Sexual advances
- Repeated and unwanted social invitations for dates or physical intimacy
- Insults based on the sex of the worker
- Condescending or paternalistic remarks
- Sending sexually explicit messages (by phone or by email)

Non-verbal conduct

- Display of sexually explicit or suggestive material
- Sexually-suggestive gestures
- Whistling
- Leering

[Explanatory note: This section defines sexual harassment. If examples are included, it is important to note that they are not exhaustive and that sexual harassment can include any conduct of a sexual nature which is unwanted and unwelcome by the recipient.]

Anyone can be a victim of sexual harassment, regardless of their sex and of the sex of the harasser. [name of company] recognises that sexual harassment may also occur between people of the same sex. What matters is that the sexual conduct is unwanted and unwelcome by the person against whom the conduct is directed.

[Explanatory note: This recognises that men and women can be victim of sexual harassment in the workplace.]

[Name of company] recognises that sexual harassment is a manifestation of power relationships and often occurs within unequal relationships in the workplace, for example between manager or supervisor and employee.

Anyone, including employees of [company name], clients, customers, casual workers, contractors or visitors who sexually harasses another will be reprimanded in accordance with this internal policy.

[Explanatory note: This section should be adapted to the needs of the company based on the type of work it does and the people who its employees are likely to come into contact with. Although it can be difficult for a company to deal with sexual harassment when it is perpetrated by third parties, the company is nonetheless responsible for the well-being of its workers if the harassment occurs during work. For example, companies where employees are in contact with third parties, such as hotels or restaurants, should have specific policies to deal with sexual harassment of its workers by customers.]

All sexual harassment is prohibited whether it takes place within [company name] premises or outside, including at social events, business trips, training sessions or conferences sponsored by [company name].

[Explanatory note: This recognises that harassment can take place both at the office, but also at social event where sexual harassment may be more likely to occur. This clause will vary according to the company and the type of work/activity they carry out.]

Complaints procedures

[Explanatory note: Although complaints of sexual harassment can be dealt with through the normal company complaints procedure, companies are increasingly adopting specific complaints procedures to deal with sexual harassment to respond better to the needs of victims and to ensure that investigations are carried out properly. Individuals who deal with sexual harassment complaints should be trained specifically on this issue and on the nature of sexual harassment.

Further, victims of sexual harassment may want to resolve the matter in different ways. Some may be happy with an informal resolution and for the matter to stop, others may want more formal measures. In addition, informal resolution mechanisms may be inappropriate where the allegation is serious or where the harasser is also the victim's supervisor. It is important that the company's complaints procedures reflect these different needs and ways of resolving conflict.]

Anyone who is subject to sexual harassment should, if possible, inform the alleged harasser that the conduct is unwanted and unwelcome. [company name] recognises that sexual harassment may occur in unequal relationships (i.e. between a supervisor and his/her employee) and that it may not be possible for the victim to inform the alleged harasser. If a victim cannot directly approach an alleged harasser, he/she can approach one of the designated staff members responsible for receiving complaints of sexual harassment. This person could be another supervisor, a member of the human resources department, etc.

When a designated person receives a complaint of sexual harassment, he/she will:

- immediately record the dates, times and facts of the incident(s)
- ascertain the views of the victim as to what outcome he/she wants
- ensure that the victim understands the company's procedures for dealing with the complaint
- discuss and agree the next steps: either informal or formal complaint, on the understanding that choosing to resolve the matter informally does not preclude the victim from pursuing a formal complaint if he/she is not satisfied with the outcome
- keep a confidential record of all discussions
- respect the choice of the victim
- ensure that the victim knows that they can lodge the complaint outside of the company through police

[Explanatory note: It is important to give the victim options for reporting the matter and this will depend on the structure of the company. The need for options for reporting is very important because having one person only to report to limits the ability of the victim to avail themselves of the complaints procedure. If for example, the harasser is also the designated person, the designated person is away on leave, or the victim would rather report it to a woman than a man or to a man than a woman and the designated person is a man, woman etc.]

Throughout the complaints procedure, a victim is entitled to be helped by a counsellor within the company. [company name] will nominate a number of counsellors and provide them with special training to enable them to assist victims of sexual harassment. [company name] recognises that because sexual harassment often occurs in unequal relationships within the workplace, victims often feel that they cannot come forward. [company name] understands the need to support victims in making complaints.

[Explanatory note: In many large companies, certain employees are designated as counsellors to help victims of sexual harassment navigate the complaints procedures.]

Informal complaints mechanism

If the victim wishes to deal with the matter informally, the designated person will:

- give an opportunity to the alleged harasser to respond to the complaint
- ensure that the alleged harasser understands the complaints mechanism
- facilitate discussion between both parties to achieve an informal resolution which is acceptable to the complainant, or refer the matter to a designated mediator within the company to resolve the matter
- ensure that a confidential record is kept of what happens
- follow up after the outcome of the complaints mechanism to ensure that the behaviour has stopped
- ensure that the above is done speedily and within [...] days of the complaint being made

Formal complaints mechanism

If the victim wants to make a formal complaint or if the informal complaint mechanism has not led to a satisfactory outcome for the victim, the formal complaint mechanism should be used to resolve the matter.

The designated person who initially received the complaint will refer the matter to a senior human resources manager to instigate a formal investigation. The senior human resources manager may deal with the matter him/herself, refer the matter to an internal or external investigator or refer it to a

committee of three others in accordance with this policy [Choose what options are most appropriate

for the company].

The person carrying out the investigation will:

- interview the victim and the alleged harasser separately
- interview other relevant third parties separately
- decide whether or not the incident(s) of sexual harassment took place
- produce a report detailing the investigations, findings and any recommendations
- if the harassment took place, decide what the appropriate remedy for the victim is, in consultation with the victim (i.e.- an apology, a change to working arrangements, a promotion if the victim was demoted as a result of the harassment, training for the harasser, discipline, suspension, dismissal)
- follow up to ensure that the recommendations are implemented, that the behaviour has
- stopped and that the victim is satisfied with the outcome
- if it cannot determine that the harassment took place, he/she may still make recommendations to ensure proper functioning of the workplace
- keep a record of all actions taken
- ensure that the all records concerning the matter are kept confidential
- ensure that the process is done as quickly as possible and in any event within [...] days of the complaint being made

[Explanatory note: Companies will need to create a specific complaints mechanism to meet their needs. For instance a small company may not be able to have a panel of three decide on sexual harassment claims, and it may be more appropriate to have certain individuals trained in the company to investigate the complaints. If a committee is created to carry out the investigation, the committee should be set up bearing in mind gender-balance and could include, a representative of the company, a worker representative, etc. The Committee members, just as HR personnel or investigators dealing with sexual harassment, should be trained on understanding and deciding what constitutes sexual harassment, how to investigate it, etc. It is also vital that the wishes and needs of the victim are incorporated into the outcome of the complaints mechanism. For example, if it is found that a victim was harassed by a colleague and that they work together on a daily basis, the views of the victim should be ascertained before making a decision on re-organising the office. For example, the victim may not want to be moved to a different department and as the victim, he/she should be entitled to decide this and not be re-victimised by being forced to move within the company.]

Outside complaints mechanisms

A person who has been subject to sexual harassment can also make a complaint outside of the company. They can do so through the human rights commission, taking legal action or reporting the harassment to police.

[Explanatory note: This section is intended to inform employees of their rights to use other national mechanisms that may be available to them. Some employees may not feel comfortable bringing a complaint through the disciplinary measures at work and they should

be informed of their right to seek redress elsewhere. The internal policy of a company cannot prevent an employee from also using the national mechanisms available to him or her.]

Sanctions and disciplinary measures

Anyone who has been found to have sexually harassed another person under the terms of this policy is liable to any of the following sanctions:

- written warning
- adverse performance evaluation
- transfer
- suspension
- dismissal

The nature of the sanctions will depend on the gravity and extent of the harassment. Suitable deterrent sanctions will be applied to ensure that incidents of sexual harassment are not treated as trivial. Certain serious cases, including physical violence, will result in the immediate dismissal of the harasser.

[Explanatory note: The policy should be applied consistently throughout the company and sanctions should be based on the gravity of the conduct. Suitable deterrent sanctions should be included in workplace policies on sexual harassment to ensure that incidences of sexual harassment are not treated as trivial events. They should become part and parcel of company regulations and/or collective labour agreements].

Implementation of this policy

[Name of company] will ensure that this policy is widely disseminated to all relevant persons. It will be included in the staff handbook. All new employees must be trained on the content of this policy as part of their induction into the company. Every year, [name of company] will require all employees to attend a refresher training course on the content of this policy. It is the responsibility of every manager to ensure that all their employees are aware of the policy.

[Explanatory note: This creates an obligation on the company to ensure that all employees are aware of the policy.]

Monitoring and evaluation

[company name] recognises the importance of monitoring this sexual harassment policy and will ensure that it anonymously collects statistics and data as to how it is used and whether or not it is effective. Supervisors, managers and those responsible for dealing with sexual harassment cases will report on compliance with this policy, including the number of incidents, how they were dealt with, and any recommendations made. This will be done on an annual basis. As a result of this report, the company will evaluate the effectiveness of this policy and make any changes needed.

[Explanatory note: Monitoring and evaluation can be done through different means, including questionnaires completed by employees, feedback from victims or those who work in the complaints procedure. This is important to review the effectiveness of the policy and the complaints procedure.]

If you have any questions or would like to know more please contact the GenderTick team at contact@akywca.org.nz