

## SEXUAL HARASSMENT

This fact sheet looks at what sexual harassment is and what steps you can take to try to stop sexual harassment happening at work.

### What is sexual harassment?

The essential characteristic of sexual harassment is that it is unwanted by the recipient, that it is for each individual to determine what behaviour is acceptable to them and what they regard as offensive. Sexual attention becomes sexual harassment if it is persisted in once it has been made clear that it is regarded by the recipient as offensive, although one incident of harassment may constitute sexual harassment if sufficiently serious. It is the unwanted nature of the conduct that distinguishes sexual harassment from friendly behaviour which is welcome and mutual (*Commission of the European Communities - on measures to combat sexual harassment*).

This fact sheet assumes that the person harassed is a woman, because this is usually the case. A man, however, has equal protection against harassment.

Sexual harassment includes:-

- embarrassing or offensive remarks
- unwelcome comments about clothes or appearance
- unwanted physical contact
- demands for sexual favours.

The Sex Discrimination Act 1975 s4A defines harassment in this way.

s4A Harassment, including sexual harassment

- For the purposes of this Act, a person subjects a woman to harassment if –
  - (a) on the ground of her sex, he engages in unwanted conduct that has the purpose or effect-
    - (i) of violating her dignity, or
    - (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her,
  - (b) he engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect-
    - (i) of violating her dignity, or
    - (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her, or
  - (c) on the ground of her rejection of or submission to unwanted conduct of a kind mentioned in paragraph (a) or (b), he treats her less favourably than he would treat her had she not rejected, or submitted to, the conduct.

## **What do you want to do about the harassment?**

Sexual harassment is unlawful sexual discrimination. Legal action can be taken against a harasser or against the employer of a harasser. However, in many cases the person being harassed simply wants the harassment to stop and doesn't want to take legal action. The advice given in this fact sheet is aimed primarily at helping you to stop the harassment but will also help you in proving your case should you need to take legal action.

### **Seeking support**

Sexual harassment is a very stressful experience and there will be people who can offer some support

#### **a) *At your workplace***

If you are in a trade union you should contact your union rep as soon as possible. If the rep is a man and you prefer to speak to a woman you can ask for this. If you are not in a trade union you may want to consider joining one. You can phone the TUC on 0870 6004882 to find out the most appropriate union for your type of work. Talk to other women in your workplace. Find out if the same man has been sexually harassing them. This will make you feel less alone and will help you stop blaming yourself. Sexual harassment is not your fault.

#### **b) *Outside the workplace.***

If the harassment is making you ill, see your G.P. and tell them what is happening. It may be useful evidence for the G.P. to have noted down the effect that harassment is having on you. You may also have friends or relatives you can talk to.

### **Keep a written record of the harassment**

This will be useful if you decide at a later time to make a complaint to management about the harasser, and/or if you decide to take a case against the harasser to an employment tribunal. Keep a diary or notebook with you to make a note *every time* you are harassed. You should write down the following:

- date and time of incident;
- place of incident - for example 'in filing office' or 'in passage between shop and office';
- what happened: include everything the harasser did and said;
- your response;
- your feelings at the time;
- names of any witnesses - including people who saw that you were upset even if they did not see the incident itself.

You should note down the incidents as soon as possible after they have occurred, and write the date and time you made the note.

## **Speaking to the harasser**

On each occasion there is harassment you should tell the harasser that you find his behaviour unwelcome. Ideally, say this in front of a witness.

In addition to this you should write a letter to the harasser saying what your complaint is, telling him that you object to his behaviour, and asking him to stop. Date the letter. Keep a photocopy of it. The man will probably not reply, but he will not be able to say at a later date that he did not know of your objections to his behaviour.

If you want, you can ask an advice centre or law centre to write a letter on your behalf demanding that the behaviour stops.

## **Complain to your employer**

It's up to you whether you complain to your employer immediately or if you want to wait to see what effect speaking to the harasser has had. If you decide to formally complain to the employer, new regulations state that you need to submit a grievance in writing setting out the grounds of your complaint (within 3 months of the date of the incident complained of). The same applies if you are considering resigning. Your employer is under an obligation to then arrange a meeting with you to discuss your grievance further. You have the right to be accompanied at this meeting by either a trade union representative or work colleague. Your employer should take your complaint seriously, should investigate it, keep you informed of what is happening and if the complaint is upheld should take disciplinary action against the harasser. If you are unhappy with the outcome of the grievance, you have the right to appeal. *NB: If you do not put in a written grievance in the first instance, you may find yourself barred from taking a claim to an employment tribunal*

## **What if your employer is the harasser?**

There are exceptional circumstances where it may not be necessary to submit a grievance. These are:

- you have grounds for believing that starting or continuing with the procedure would result in a significant threat to any person (including yourself) or to any property;
- you have been subject to harassment and have reasonable grounds to believe that starting or continuing with the grievance procedure would result in you being subjected to further harassment;
- it is not practicable to commence the procedure or comply with a substantial requirement within a reasonable period.

If you are not sure whether these exceptions apply to you, please seek advice from Sheffield Law Centre, an advice centre or Citizens Advice Bureau.

## **Taking your case to a tribunal**

You do not have to resign to take a case to an employment tribunal although people often do. You can claim against both the harasser and the employer. If your case is to

succeed against the employer you will have to show that the employer had not taken reasonable steps to prevent the harassment happening in the first place or, once they knew about the harassment, they did not take reasonable steps to stop it.

Before you decide to resign and/or take a case to an employment tribunal you should seek advice.

### **Time limits**

You need to bear in mind that the time limit for bringing a claim is 3 months from the date of the incident. However if you have submitted a grievance a tribunal will extend the time limit by a further 3 months. If the harassment continues over a period of time, the time limit will usually run from the last incident.

If you are considering bringing a complaint against an individual you do not have to raise a grievance either with the employer or with the individual. The time limit for a complaint against an individual is always 3 months from the incident (or last of a series of incidents) of harassment.

A tribunal does have power to allow a claim to be submitted late if it considers it just and equitable to do so but you should try and avoid having to rely on this.

#### ***Law Centre opening times:***

*You can contact the Law Centre for help by phoning 0114 2731888 between 10am and 4pm each weekday. When you phone, have any documents with you relating to your dismissal.*

#### **Other useful numbers:**

Sheffield Rape & Sexual Abuse Counseling Service (previously Sheffield Rape Crisis) 0114 261 8990

Updated March 2008.