



Help for Sexual Harassment

Information to help make a complaint about sexual harassment

The Human Rights Commission has a free, informal and confidential service for questions or complaints about unlawful discrimination or sexual harassment.

This guide lets you know about the options for making a complaint about sexual harassment, including to the Human Rights Commission.



If you are making a complaint

What is sexual harassment?

Sexual harassment is unwelcome or offensive sexual behaviour. Sexual harassment can involve how someone speaks to you, unwanted physical contact or stalking. It can also be someone sending you unwanted messages, pictures or other images containing sexual content.

Behaviour doesn't have to be repeated to be harassment. Serious one-off behaviour can be harassment as well.

It is also sexual harassment to request sexual activity with a suggestion of a reward for agreeing or negative consequences for refusing.

What's important is how the behaviour affects you or others. You don't have to tell the

person harassing you that their behaviour was unwelcome or offensive. Even if the sexual harassment is unintentional and the person being offensive is unaware of how their behaviour affects you, they can still be held responsible.

Both the Human Rights Act 1993 and the Employment Relations Act 2000 make sexual harassment a form of unlawful discrimination.

If you're unsure about anything, please call us on our free phone **0800 496 877**.

If the sexual harassment is also a crime, you can get help from the Police.

Examples of sexual harassment

- offensive sexual remarks or jokes in your workplace or school
- implied or actual threats of overlooking you for promotion if you say no to your boss's advances
- promises or hints you'll get a promotion or opportunities at work for going along with your boss's advances
- unwelcome touching, patting, kissing or pinching by your boss, co-workers, suppliers or customers
- 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, trades person, sales person or anyone who provides you with goods or services
- sexually offensive images in the workplace, including screen savers
- unwanted questions about your sex life
- being excluded from groups, teams, clubs or organisations because you turned down unwanted advances

Who can I complain to?

If the harassment happens outside of work, you can complain directly to the Human Rights Commission on free phone **0800 496 877**.

You can also have someone such as a lawyer, advocate or trade union representative make a complaint on your behalf. It's free to complain to the Commission.

Protection from victimisation

Employers have a responsibility to take steps to prevent harassment and respond to complaints - including harassment by their employees or clients.

The law protects you from being victimised if you make a complaint to the Commission or support another person to make a complaint.

If you've been sexually harassed at work, there are two services you can complain to.

If you're not sure which one to speak to, both services can give you more information when you talk to them.



Human Rights Commission

Call: **0800 496 877**

Email: infoline@hrc.co.nz

Visit: www.hrc.co.nz

You should complain to the Human Rights Commission within 12 months. The complaint can be against your **employer** and/or the **person** whose behaviour you are complaining about.



Employment New Zealand (MBIE)

Call: **0800 20 90 20**

Email: info@employment.govt.nz

Visit: www.employment.govt.nz

You have 90 days to complain to MBIE. The complaint is against your **employer**.



New Zealand Government



If you've been accused of sexual harassment

If someone has complained about your alleged behaviour to the Human Rights Commission, you'll be sent a letter outlining the nature of the complaint. The letter will explain what happens next in the complaint process. The complaint process is free, impartial, flexible and confidential to everyone involved.

Our mediators don't judge or make decisions. Their role is to assist people to reach fair and effective resolutions quickly, which can involve setting up a meeting, explaining the law and helping you work through possible solutions.

If the matter can't be resolved through the dispute resolution process, the person who lodged the complaint can take the matter to the Human Rights Review Tribunal (find out more at www.justice.govt.nz).

Our mediators don't judge or make decisions.

They can also take the matter to the Employment Relations Authority (www.era.govt.nz).



How does the Commission's complaint process work?

The aim of our complaint process is to help people reach fair and effective resolutions quickly. The process is free, safe, private and confidential for everyone involved. It helps people to discuss issues in an open, safe and constructive way. Our process can help both sides agree to a fair result.



Step 1: Contact our Infoline Team

The team will listen to you, ask questions, and if appropriate, give you a complaint form to complete. To start the process, call our free phone **0800 496 877**, email Infoline@hrc.co.nz or visit www.hrc.co.nz.



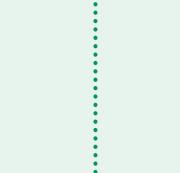
Step 2: Informal Intervention

Our team will provide information to help you know what to do with your complaint. You may be referred to one of our mediators who will discuss the options available to you.



Step 3: Mediation

If you choose mediation, the mediator lets the other people involved know a complaint has been made. If you both agree to a meeting, the mediator will help parties safely work through the issues. A mediator doesn't make decisions but can explain the law and help you work through possible solutions. Mediation is free, confidential and impartial.



Support people can attend if all parties agree. Mediation is voluntary. If at any stage, any party wishes to withdraw, they can. The mediation process is flexible to meet the needs of the parties. For example, mediation can happen with the parties in separate rooms. This is called shuttle mediation.



Step 4: Resolution

Many complaints can be sorted out by informal intervention or mediation. Resolution can include an apology, an acknowledgement of how the behaviour affected the person who complained, agreement not to do the same thing in the future, a revised working arrangement where the parties work in separate areas, a training programme or compensation.



Step 5: Legal Action

If your complaint isn't resolved at mediation, you could take legal action. You can proceed to either the Human Rights Review Tribunal which is like a court. You can apply for free legal representation from the Office of Human Rights Proceedings (www.hrc.co.nz/oohrp).

Or you can choose to take the matter to the Employment Relations Authority (www.era.govt.nz).

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



If you are an employer – How you should deal with sexual harassment complaints

Your obligations

Both the Human Rights Act 1993 and the Employment Relations Act 2000 make sexual harassment a form of unlawful discrimination, so it's vital employers know and understand your statutory obligations. It's also important to have policies and procedures in place to prevent sexual harassment.

As well as your own behaviour, employers are responsible for managing the behaviour of all employees, customers and clients, and you may be liable.

Zero tolerance

Since primary responsibility for sexual harassment in employment lies with the employer, you need to ensure all employees know 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 to address the complaint.

It's important to remember that sexual harassment is subjective. What matters is what offends the individual. That person doesn't have to tell the offender the behaviour was unwelcome or offensive when it happens.

An employee can make a sexual harassment complaint if they find something sexually offensive, even if other employees don't feel the same

Protection from victimisation

No employee should be treated unfairly because they have complained about sexual harassment.

Your written policy

All employers should have a written policy statement advising employees that sexual harassment is against the law 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.

MBIE provides guidance about how employers should handle harassment complaints and investigations, see

<https://www.employment.govt.nz/resolving-problems/types-of-problems/bullying-harassment-and-discrimination/general-process/>



Mediation

The Human Rights Commission provides dispute resolution services to people with discrimination or harassment complaints. The complaint needs to be within the scope of the Human Rights Act 1993.

What is mediation?

Mediation is an informal process to help people work through issues and try to come up with solutions themselves. The mediator helps the people involved discuss the issues and better understand each other's perspectives so they can make well-informed decisions about what to do.

Mediation can take place in person, over the phone, by email or by other forms of communication. Meeting in person often helps people resolve their issues more quickly and effectively. You don't necessarily have to be in the same room as the other people. The mediator will discuss with parties which option is most suitable.

Mediation is confidential. This means the parties can discuss their issues openly without risk of what they say being used against them if the matter doesn't resolve at mediation.

What happens at a mediation meeting?

Mediation meetings are kept as informal as possible. They are not like court rooms. The mediator doesn't judge or make any decisions about who is right or wrong.

The mediator runs the meeting and helps parties talk and listen to each other, and makes sure each person has a chance to share their point of view.

The mediator helps parties come up with solutions everyone can agree on. They don't give advice or tell parties what to do.

If parties reach agreement, a written settlement agreement may be needed. This may be written at the meeting.

The Commission seeks to mediate fair and effective resolution of these complaints at the earliest opportunity.

What do I need to do before a mediation meeting?

It is useful to note down things you want to say so you don't forget any important points.

The mediator may ask you to provide documents relevant to the complaint. This is a normal part of the process and helps the mediator get a better understanding of the issues.

Let the mediator know in advance if you have particular needs, such as an interpreter or some accommodation for a disability.

How should I approach a mediation meeting?

Be prepared to listen and to accept that other people are likely to have quite different views to you. As far as possible, try to consider the situation from the other person's perspective.

If you have realistic expectations about how you might settle the complaint, it's more likely you'll be able to resolve the issue in a mediation.

Can I bring support to a mediation meeting?

Yes. You can bring a support person or people, whānau, an advocate or a lawyer along to a mediation meeting.

However, all parties need to know and agree to their attendance, before the mediation.

Please let the mediator know if you plan to bring support. They will guide you through this process before the meeting.

The law

Section 62 of the Human Rights Act (1993) gives a basis for considering if unlawful sexual harassment has happened. It's worth noting the definition of "employer" is very broad, extending to "employers" of independent contractors as well as unpaid workers. The definition is in section 2 of the Human Rights Act.

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).

How long does a mediation meeting take?

Most mediations take between two and four hours. A small number can last all day. In some cases you may need more than one meeting. Your mediator can let you know how much time it might take.

- (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.



Do you need other support?

Making a complaint can feel stressful so we encourage you to find support. You could talk about it with someone you trust. You also might want to keep a record of incidents you find offensive. You don't have to do this but it can help support your complaint later.

This booklet only focusses on the Human Rights Commission mediation process. It is not legal advice. Here are other places that can help you.

Advice could also available from these people and places:

- 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
- Netsafe (online harassment)
- a Citizens Advice Bureau
- a Community Law Centre



Do you need to speak to the Police?

If the harassment is physically threatening or contains sexual overtones, it may constitute an offence and should be reported by calling us on 105 or visiting your local police station as soon as possible.



Safe to talk Kōrero mai ka ora

Counselling options

Free, confidential, non-judgemental support for those affected by sexual harm in any way.

Safe to talk Kōrero mai ka ora is the national sexual harm helpline. Available free and anytime by calling **0800 044 334** or text **4334**, or email, webchat and resources at www.safetotalk.nz

Professional sexual trauma counsellors can support survivors, concerned whānau and people who may have harmed others.

Anyone contacting Safe to talk can say as little or as much as they like and can be anonymous if they wish.



**NZ
Human
Rights.**

Human Rights Commission
Te Kāhui Tika Tangata

If you have any questions for the Human Rights Commission,
please call us on our
free phone 0800 496 877
or visit our website www.hrc.co.nz