

AMPLIFY WOMEN

Harassment Toolkit

Key Resources and Information

This toolkit is designed to assist you if you feel that you are being harassed at work.

It aims to address:

- (1) what your rights are if you are an employee and if you are a freelancer;
- (2) what type of harassment or treatment you are experiencing i.e. is it bullying, sexual harassment or sexual assault;
- (3) situations where it may be appropriate to make a complaint under criminal law;
- (4) where to get further assistance.

Above all, do not feel alone, talk the issue through with a friend and decide how best you should tackle your situation.

Dignity at Work

Everyone is entitled to respect and dignity in their working life. Everyone's professional life should be free from all forms of bullying and harassment. Where harassment occurs, it can negatively impact on the individual, undermine their experience within the workplace, and potentially result in health issues, absences, and staff resignations.

In Ireland, Dignity at Work is underpinned in legislation by the Employment Equality Acts¹ (1998-2015) and the Safety, Health and Welfare at Work Act 2005². All employers are required by law to have adequate policies in place to ensure Dignity at Work is safeguarded.

What is "Harassment"?

Harassment is unwanted conduct which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading or humiliating or offensive environment for that person that is linked to a person's race, nationality, religion or belief, disability, sexual orientation, membership of the Travelling community, family status, age, gender or civil status.

What is "Bullying"?

Bullying is very similar to harassment and can be described as repeated inappropriate behaviour that undermines your right to dignity at work. It can be done by one or more persons and can be aimed at an individual or a group to make them feel inferior to other people. Bullying can take many different forms. It can be verbal bullying, physical bullying or cyber bullying (which is carried out on the internet or mobile phones, through social networking sites, email and texts). As bullying and harassment are so alike, where harassment is referred to in this document it can also be taken to apply to bullying.

What is "Sexual Harassment"?

Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature (See Section 14A of the Employment Equality Acts 1998-2015)

Harassment in a Work Context

The Employment Equality Acts (1998-2015)¹ require that all organisations have adequate policies and processes in place to promote equality and tackle discrimination (including bullying and harassment). Employers have a duty of care to employees and freelancers in this regard, and are subject to legislative requirements governed by the Safety, Health and Welfare at Work Act 2005².

These laws apply to all members of staff including managers, directors or board members of a company or association.

Both Acts protect all kinds of employees i.e. those on **contracts of service** (for example a five year contract with a theatre company) and **contracts for service** (for example a freelancer working on a once-off lighting design job).

The employer also has other responsibilities. If a client, customer or other business contact, harasses an employee and the employer has not taken reasonable steps to avoid it, the employer is also liable.

¹ Employment Equality Act | Irish Statute Book | <http://www.irishstatutebook.ie/eli/1998/act/21/enacted/en/html>

² Safety, Health and Welfare at Work Act 2005 | Irish Statute Book | <http://www.irishstatutebook.ie/eli/2005/act/10/enacted/en/print>

Some Examples of Harassment

Lots of different behaviour can constitute harassment, especially if it feels inappropriate and is repeated. It can be:

- Verbal i.e. jokes, comments, slagging or banter that has a belittling context
- Written i.e. texts, messages on social media including apps, emails or notices
- Physical i.e. jostling, shoving, inappropriate touching, or any form of assault
- Intimidatory i.e. gestures, posturing or threatening poses
- Visual displays i.e. posters, emblems or badges
- Isolation/exclusion from social activities within your work context
- Pressure to act/behave in a way that you find inappropriate, i.e. being asked to undress/dress in an inappropriate manner (see Irish Equity's policy on Bullying and Harassment for more. [Link below](#)).

What should I do if I experience harassment?

There are a number of ways of reporting and dealing with harassment; the process for reporting an incident (or repeated incidents), varies depending on the level of harassment.

If you want to report the incident **within your workplace**, you have a number of options.

Reporting Harassment at Work: Step by Step

(1) When considering whether to report the incidents or not, there are some key steps to take:

- Make a note about the incident(s) somewhere. Include as many details as you can i.e. when did it happen, who was in the room, what was said and how you responded (if at all), and how you felt after. It's a good idea to send an email to yourself because it becomes a recorded note of events.
- Familiarise yourself with the policies and procedures that your employer has in place to deal with and prevent harassment at work. Any policy should set out what constitutes unacceptable behaviour in the workplace, and there should be an effective complaints procedure to deal with complaints.
- Speak with the appropriate contact within the organisation as defined in the policy. The appointed contact may be part of the company's HR or Personnel staff, a shop steward/union official, or line manager/supervisor.
- If you don't feel you can talk to the appropriate contact because they are in some way involved, then speak with the appropriate contact's immediate supervisor. It can be useful to speak to a colleague you trust, or union representative, to plan how best to make your complaint.
- It's best to register a complaint as close as possible to the time when the last incident occurred or at least within six months. This is so that it can be investigated properly while events are clear in the memory of everybody involved.

(2) Depending on your working arrangements, your employer/workplace may offer an informal resolution as the first step of the process.

This informal resolution could take the form of a meeting between the complainant, the alleged offender (if the complainant agrees), and a manager. Sometimes, an informal approach will not resolve the issue and in situations where the harassment continues, a formal complaint may be the next appropriate step.

Please note that you do not have to accept this stage of the process and no inference can be drawn if you choose not to avail of the informal resolution procedure.

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- (3) The next stage of the process requires you to submit a formal, written complaint to an appointed member of staff (this may be a manager, HR/Personnel staff, or other appointed individual). Make sure to write only about the precise details of incidents of harassment.

Your employer's/workplace's policy on harassment should clearly detail all steps in the formal complaint procedure.

- (4) Internal investigations will then start, and the alleged perpetrator(s) will be notified in writing. Generally, a person who is considered to be impartial will be appointed to investigate the allegation. In some cases, the organisation will appoint a mediator from outside the organisation. In both cases, this person is normally referred to as the investigator. The investigation should be governed by a set of guidelines or rules (terms of reference). Ideally, these should be agreed on by all those involved before the process starts. If you are unhappy with the guidelines, you should make your views known.
- (5) The investigator will be given the written complaint and will interview you, and the alleged perpetrator(s). Interviews will be carried out on a confidential, individual basis. If you wish, you can be accompanied by a colleague or union representative. Any relevant witnesses to the harassment will also be interviewed. The focus of these interviews should be on establishing the facts. Both the complainant and the alleged perpetrator will receive the written notes of what the other person said.
- (6) Based on the investigative process, the investigator will then compile a written report outlining their findings. This will be sent to you, and the alleged perpetrator for comment, before any action is taken.
- (7) Typically, a course of action, based on the findings, will be agreed. Both you and the alleged perpetrator will be notified.

Sample Case (this is a fictitious account, simply for illustrative purposes):

Jane, a freelance set designer experienced sexual harassment on a short-term contract:

"It started with a few smart comments about my work – being a 'girl' I wasn't up to scratch or 'tough enough' for some of the 'rough and tumble' happening around the set-build. I developed a bit of a thick skin. One day when working late on the project, this same colleague propositioned me. I rejected him and he responded by saying he 'was only joking' before going on to use some sexually-explicit language suggesting he wouldn't be interested in me anyway. A member of the security staff overheard the conversation and was shocked; he spoke to me about it afterwards and encouraged me to report it; he assured me he'd act as a witness if I did.

It's a small enough company, so there isn't a HR department as such and I'm not a member of a union – but I talked to a friend and got some advice from the Citizen's Information website. I felt nervous about confronting the issue with the perpetrator on a one-to one so I wrote down the details of the incident, as well as various other things that had taken place in the run-up to it, and then felt confident enough to bring it to the Management's attention. I didn't want anyone else to experience the same issues as I had. I spoke to the General Manager, and she asked me to put the complaint in writing, and told me they'd appoint an investigator to look into it. It was treated sensitively, and following the formal investigation, the perpetrator was sanctioned."

If a complainant is not happy with the way the investigation was conducted or if no investigation was conducted at all, s(he) may pursue a case to the Workplace Relations Commission (WRC) under the Employment Equality Acts. This is done through an online form by following this link: www.workplacerelations.ie.

The WRC is a free service. While many people represent themselves, you can ask a Union Official or legal representative to represent you. Complaints can be dealt with by mediation if both parties agree or by adjudication. Complaints must be brought within six months of the last act of harassment. This time may be increased to 12 months if “reasonable cause” for the delay exists.

These links contain examples of sexual harassment cases in the WRC:

<https://www.workplacerelations.ie/en/Cases/2015/August/DEC-E2015-079.html>

<https://www.workplacerelations.ie/en/Cases/2004/June/DEC-E2004-033-Full-Case-Report.html>

<https://www.workplacerelations.ie/en/Cases/2017/March/DEC-E2017-020.html>

It is also important to remember that there are strong victimisation provisions in the Employment Equality Acts. An employer cannot treat a complainant badly for raising an issue of harassment, or being a witness. Awards by the WRC and/or Labour Court tend to be generous where victimisation by an employer of a complainant is proved.

The Irish Human Rights and Equality Commission also has a general remit to promote equality and can give advice, and in some cases, legal assistance if a complainant seeks to bring a claim of harassment under the Equality Acts.

Where can I learn more about my legal rights?

- Citizens Information on Harassment at Work http://www.citizensinformation.ie/en/employment/equality_in_work/harassment_at_work.html.
- Your Equal Rights Explained – this is a guide to your rights under the Equal Status Act (provision of goods and services) https://www.ihrec.ie/download/pdf/your_equal_status_rights_explained_easy_to_read_version_.pdf
- The Health and Safety Authority has some useful guidelines on bullying in the workplace http://www.hsa.ie/eng/Workplace_Health/Bullying_at_Work/
- Irish Equity on Bullying and Harassment <http://irishequity.ie/wp-content/uploads/2015/12/EquityBullyingHarassmentPolicy.pdf>.

Consult with a solicitor who will have the experience and expertise to guide you through your rights and all available remedies.

Criminal Complaints: What if a crime has been committed?

If a crime has been committed (e.g. rape, physical assault, stalking), you should consider reporting the incident to the Gardaí (see below for more options and contact points) – you can also discuss your experience with them without filing a criminal report. Sometimes it is helpful first to talk to a supportive individual before proceeding to press official charges.

Harassment/Stalking

A harassment charge can be taken against someone who is persistently harassing you i.e. repeatedly texting you, messaging you on social media, calling you, emailing you or calling to your house. There is no separate law for sexual harassment, so the law of harassment would apply if the harassment is of a sexual nature.

In this situation it is important to keep a record of all contact, do not delete messages, save or screenshot them if they usually only last temporarily and show them to the Gardaí if you decide to make a complaint. The specific offence of ‘harassment’ is provided for in section 10 of the Non-Fatal Offences Against the Person Act 1997 (not limited to sexual harassment); this covers what is commonly known as ‘stalking’ – it requires proof that a person has engaged in ‘persistently following, watching, pestering, besetting or communicating with’ the victim.

Assault

The definition of assault in criminal law is in section 2 of the Non-Fatal Offences Against the Person Act 1997; it means applying force to, or causing an impact on, the body of another; this can be punching, hitting, physical touching or threatening to touch/hit another person.

Sexual Assault

There is a legal difference between sexual harassment, which is not a crime in itself, but which is actionable in civil law, i.e. you can personally sue somebody who harasses you in order to seek damages; and sexual assault, which is a crime and should be reported to the Gardaí so that a prosecution may be taken against the perpetrator.

Sexual assault is provided for in section 2 of the Criminal Law (Sexual Offences) (Amendment) Act 1990; it means an assault in circumstances of indecency; this would cover acts of sexual groping or threatened groping, as well as more serious sexually abusive behaviours. Other more serious sexual offences in law include offences against children; aggravated sexual assault; and rape (penetrative sexual assault).

Reporting

While sexual assault may be reported at any time it is recommended that it be reported as soon after the event as possible. Further advice on this can be sought from the Rape Crisis Centre: <http://www.rapecrisishelp.ie/> or call them on: 1800 778 888. This is a national number and they have offices throughout the country including Dublin, Cork, Limerick and Galway, Carlow, Sligo, Dundalk, Waterford and Donegal. They will assist you with making a complaint and providing counselling.

If you want to report the incident as a crime contact An Garda Síochána at your nearest station.

See their information on reporting Sexual Assault here:

<http://www.garda.ie/Documents/User/An%20Garda%20Siochana%20Sexual%20Crime%20&%20Child%20Abuse%20Leaflet.pdf>

Supports Available:

Rape Crisis Centre: 1800 778 888 <http://www.rapecrisishelp.ie/>

Samaritans: 116 123 (free to call) <https://www.samaritans.org/how-we-can-help-you/contact-us>

This toolkit is for guidance only and is not a definitive statement of the law. It does not constitute legal advice and should not be mistaken as such.

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AmplifyWomen is an umbrella group of organisations who represent, or carry out research, on women working in the cultural and media industries. The organisations distributing and endorsing this initiative are: Women in Film & Television, Irish Equity, Women in Animation, Members of #WakingTheFeminists, Writers Guild of Ireland, Broadly Speaking, Screen Producers Ireland, Screen Directors Guild of Ireland.

