

Workplace Sexual Harassment & Personal Injuries

Sexual harassment in the workplace is prohibited by the Employment Equality Acts. The legislation places responsibility on an employer to prevent the sexual harassment of its employees. Employers will be legally responsible for the sexual harassment of its employees by other employees, its customers/clients and/or its business contacts.

The Employment Equality Acts offer a high level of protection and have significant scope. An employee does not need to have any minimum term of service to be protected. The legislation can also cover agency workers and self employed persons. The sexual harassment need not be confined to the workplace. The legislation extends to work related social events such as work parties, training events and working away from the usual place of work. Sexual harassment does not have to be a series of events. It can include a once off incident. It also does not matter if the harasser did “not mean any harm” or was only engaging in “banter” at the time. What matters is the effect that the behaviour had on the person.

Sexual harassment is discrimination on the gender ground in relation to an employee’s conditions of employment. It is defined in Section 14 (A)(7)(a)(ii) of the Employment Equality Acts 1998 – 2011 as any “*form of unwanted verbal, non-verbal or physical conduct of a sexual nature*”. The unwanted conduct must have the “*purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person*” in accordance with Section 14A(7)(b) of the Employment Equality Acts 1998 – 2011. Behaviour of a sexual nature can be physical, e.g. inappropriate touching, patting, pinching, brushing up against a person or assault. Behaviour of a sexual nature can also be non physical, e.g. suggestive remarks, sexual advances, inappropriate emails, display of pornography or perhaps even dress policies where they require an employee to dress proactively or in a way that is not equivalent to the opposite gender. The Employment Equality Acts will also cover scenarios where a person has been treated differently in the workplace because of rejecting and refusing to accept the sexual harassment, e.g. salary increases, access to training, promotion.

The legislation places an onus on an employer to act in a preventative way. It will be a defence for an employer to show that they took reasonably practicable steps to prevent an employee from being sexually harassed. This is done by having a good policy in place, ensuring that the policy is properly communicated to all employees, ensuring that employees have proper training and that there is a very clear complaints and review procedure for dealing with any sexual harassment in the workplace. Overall, an employer should have a strong commitment to ensuring that its employees have a safe working environment free from sexual harassment. Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012 (SI 208/2012) sets out very helpful information in relation to policies for employers.

The remedies for victims of sexual harassment under the Employment Equality Acts 1998 – 2011 is compensation up to the value of two years remuneration or €40,000.00, whichever is the greater.

Compensation under the Employment Equality Acts is for having suffered the sexual harassment. It is not compensation for the effect of the sexual harassment on a person's health. Sexual harassment can be traumatic and can have a damaging effect on a person's health. It can cause a lot of stress and anxiety which can lead to a person becoming very ill. It can cause a person to develop depression or post traumatic stress disorder. It can lead to a person having to take time off work and this brings it's own financial difficulties. This can be a difficult time for a person and he/she may be under the care of a General Practitioner and/or a Psychiatrist. If you have suffered a recognisable psychiatric injury, it may be appropriate to submit a claim to the Personal Injuries Assessment Board to claim for compensation for the injuries, any out of pocket expenses for medical expenses and any loss of wages. However, such cases would not be the usual type of personal injuries case. Accordingly, it is very important that an employee would seek the appropriate legal advice before embarking on a case.

There are strict time limits within which to bring a case for sexual harassment and / or for injuries as a result of the sexual harassment. A claim for sexual harassment before the Workplace Relations Commission under the Employment Equality Acts must be brought within 6 months of the most recent incident of sexual harassment. Any negligence claim for personal injuries must be brought within 2 years of the first incident of harassment, if each incident of harassment is to be included.

Sexual harassment is unlawful. It is wrong. It is inexcusable. Unfortunately, it does happen and it can be a very difficult time for person. If you are being sexually harassed, it is important that you go to your GP, if necessary, raise a grievance with your direct line manager at work and speak with a specialist employment law solicitor. We are here to help.

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

****In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**