



Preventing and responding to sexual harassment at work - advice for businesses

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1.0

Who is this guide for?

Sexual harassment harms workers.

This guide will help businesses¹ to assess and manage the health and safety risks arising from sexual harassment.

This guide covers:

- what sexual harassment is
- how to work out whether sexual harassment is occurring
- how to manage the risks from sexual harassment
- how to deal with reports of sexual harassment
- who can help.

¹ In this guide 'business' means the person conducting a business or undertaking (PCBU). An undertaking is usually not-for-profit or non-commercial (eg council, school, charity). This guide covers businesses and other PCBU organisations. See Section 7 of this guide for more information about PCBUs and worker duties.

2.0

What is sexual harassment?

The Human Rights Act 1993 defines sexual harassment as any unwelcome or offensive sexual behaviour that is repeated, or is serious enough to have a harmful effect, or which contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment.²

Examples of sexual harassment at work can be seen in Figure 1.



FIGURE 1: Examples of sexual harassment at work²

Sexual harassment can happen at any time and at all levels of a business.

Sexual harassment can be spoken or written, visual or physical acts.

It can occur in person, through text messaging, or online through email, internet chat rooms or other social media channels.

² Sourced and adapted from the Human Rights Commission guidance *Sexual Harassment: What you need to know* www.hrc.co.nz/files/6814/9516/8571/46693-NZHRC_-_Dealing_with_Sexual_Harassment_Booklet_v6.pdf

3.0

How can you work out whether sexual harassment is occurring?

Assessing the risk to workers from sexual harassment

There are certain factors that mean your workers could be at greater risk of sexual harassment.

These include:³

- businesses:
 - having low worker diversity (eg having a male-dominated workforce)
 - having many young workers
 - having power imbalances (eg between managers and workers, or customers and workers)
 - tolerating or encouraging alcohol consumption during or around work hours or at work functions
- workers:
 - doing isolated work
 - doing repetitive work.

To work out whether your workers are being sexually harassed, you could look at the sources of information in Figure 2.

³ Adapted from the U.S. Equal Employment Opportunity Commission *Chart of Risk Factors for Harassment and Responsive Strategies* www.eeoc.gov/eeoc/task_force/harassment/risk-factors.cfm



FIGURE 2: Potential sources of information about the prevalence of sexual harassment

For example:

- **Rate of resignations/turnover:** Often the person experiencing sexual harassment leaves. A string of resignations from one area of a business may indicate that sexual harassment is occurring.
- **Level of absenteeism – sick leave:** Check absenteeism records including sick leave to see if they cluster around specific business units or managers.
- **Number of formal complaints/legal actions/reports:** Look for reports of sexual harassment.
- **Worker surveys:** You could hold worker surveys to establish whether sexual harassment is occurring. Always give overall feedback to the participants but keep individual responses confidential. You could do this following major restructuring, appointment of new managers, or the entry of groups of new workers.
- **Appraisals:** You could assess the performance of managers and supervisors. One approach is an anonymous, structured appraisal of a manager’s competencies by their peers and workers.

Using the information gathered, assess the health and safety risk arising from sexual harassment.

Put control measures in place that are proportionate to the risk (see Section 4 of this guide for help with this).

However even if you haven’t found evidence of sexual harassment, as it is a known and common cause of harm, you’re still expected to have processes in place to deal with it. Managing the risks arising from sexual harassment should be a standard part of your approach to effectively manage health and safety.

4.0

What can you do to manage the health and safety risks from sexual harassment?

You must ensure, so far as is reasonably practicable, the health and safety of workers, and that other persons are not put at risk by your work.

You must, so far as is reasonably practicable, eliminate work risks. If a risk can't be eliminated, it must be minimised so far as is reasonably practicable.

Risks to health and safety arise from people being exposed to hazards (anything that can potentially cause harm such as sexual harassment).

As sexual harassment is a common and known source of harm you're expected to have processes in place to effectively deal with it.

Section 69 of the Human Rights Act 1993 outlines a basic process for employers in respect of employee complaints concerning clients/customers.

Possible control measures

You and your workers need to be truly committed to a 'no sexual harassment' work environment for change to occur.

Figure 3 summarises actions (control measures) you could put in place to deal with the risks arising from sexual harassment.

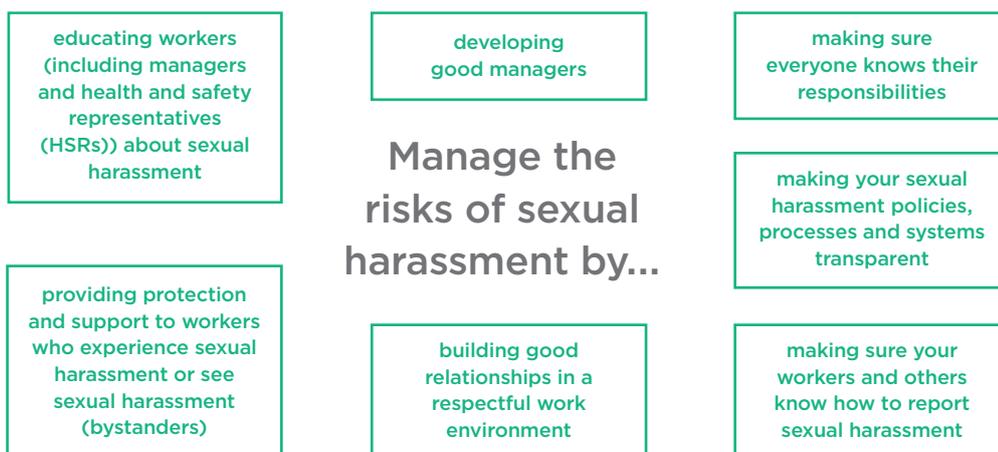


FIGURE 3: Possible control measures

See Table 1 for more information about these.

ACTION	HOW?
Build good relationships in a respectful work environment	<ul style="list-style-type: none"> - Have a 'no sexual harassment-tolerated' work culture. - Have a code of conduct that describes expected behaviours and what misconduct and serious misconduct is. - Set the core values of your business. - Promote good work relationships. - Recognise and promote diversity. - Set up a conflict management process. - Set up a process for people to report sexual harassment (see below). - Set up systems to support workers at a greater risk of being harassed (see Section 3 of this guide for those who may be at greater risk).
Educate workers (including managers and health and safety representatives (HSRs)) about sexual harassment	<ul style="list-style-type: none"> - Provide information, training, instruction or supervision needed to protect all people from health and safety risks from the work being carried out. - Let your workers know what acceptable/non-acceptable work behaviour is, and that sexual harassment will not be tolerated. - Run awareness programmes or training on: <ul style="list-style-type: none"> - consent - what sexual harassment is - what your sexual harassment policy contains (see below) - what worker should do if they experience sexual harassment - what workers can do if they see sexual harassment (bystanders) - the right of employees to raise a personal grievance under the Employment Relations Act 2000 or submit a complaint under the Human Rights Act 1993 to the Human Rights Commission - the right of independent contractors working under a contract for service to submit a complaint under the Human Rights Act 1993 to the Human Rights Commission. - Ensure your induction for new workers covers the information above. - Talk about sexual harassment at team meetings and toolbox talks. - Put up posters reminding workers what's acceptable work behaviour. - Train key workers as sexual harassment contact persons to provide support and advice. <p>There are specialist agencies that can provide training. You could check out these organisations to see if they can provide the training you need.</p>
Develop good managers	<ul style="list-style-type: none"> - Give your managers leadership training to help them effectively manage and supervise workers. - Expect managers to intervene early to call out and deal with any unreasonable behaviour before it escalates.
Make sure everyone knows their responsibilities	<p>While businesses must effectively deal with sexual harassment at work, everyone at work has a role in dealing with it.</p> <ul style="list-style-type: none"> - Make everyone at work aware of their roles and responsibilities. For example workers: <ul style="list-style-type: none"> - have duties to take reasonable care for their own health and safety and to take reasonable care that they don't harm others while at work - must cooperate with reasonable policies and procedures about sexual harassment the business has in place that have been notified to them - must comply, so far as is reasonably practicable, with any reasonable instruction about sexual harassment given by the business so the business can comply with the law - should report sexual harassment they experience or see so their business can do something about it. <p>See Section 7 of this guide for more information about health and safety duties under the Health and Safety at Work Act 2015 (HSWA).</p>

ACTION	HOW?
<p>Make your sexual harassment policies, processes and systems transparent</p>	<ul style="list-style-type: none"> - Have a sexual harassment policy that outlines expectations for acceptable behaviour and your commitment to deal with sexual harassment (see Section 7 of this guide for where to find an example you could base yours on). - Put in place a policy on alcohol consumption at work events. - Make sure processes/systems cover how you will deal with sexual harassment including: <ul style="list-style-type: none"> - what training workers and managers will receive - how workers report sexual harassment, and what protection/support they will receive - how you will investigate and deal with reports - how you will check that your control measures are effectively managing the health and safety risks arising from sexual harassment.
<p>Make sure your workers (and others) know how to report sexual harassment</p>	<ul style="list-style-type: none"> - Make sure workers know that you want to be told when sexual harassment occurs, and will support and protect those who report sexual harassment. - Set up multiple ways (formal, informal, anonymous) to report sexual harassment. One way could be a written form (see Section 7 of this guide for where to find a reporting form template). - Tell workers: <ul style="list-style-type: none"> - how to record instances of sexual harassment – the more specific information the better - how to report about sexual harassment they directly experience or see to you - what to expect after they report sexual harassment including how you will support and protect them from reprisals - that as an employee, they have the right to raise a personal grievance under the Employment Relations Act 2000 or submit a complaint under the Human Rights Act 1993 to the Human Rights Commission - that independent contractors working under a contract for service have the right to submit a complaint under the Human Rights Act 1993 to the Human Rights Commission.
<p>Provide protection and support to workers who experience sexual harassment or see sexual harassment (bystanders)</p>	<ul style="list-style-type: none"> - Protect all the people involved (including both sides of the complaint, support people and witnesses) from victimisation (eg being punished, bullied, intimidated). - Support can come from within the organisation (eg trained sexual harassment contact persons) or other parties such as unions, or employee assistance programmes. - Provide the support as soon as possible after you receive a report of sexual harassment.

TABLE 1: Possible control measures

When deciding what control measures to use, consider what’s reasonably practicable in your circumstances, and what’s proportionate to the risk.

‘Reasonably practicable’ means you do what is reasonable to ensure health and safety in your circumstances (eg what a reasonable person in your position would be expected to know and do) – you do what is reasonable to first try to eliminate the risk. If the risk can’t be eliminated, then you must minimise it.

Just because something is possible to do, doesn’t mean it is reasonably practicable in the circumstances. However, cost can only be used as a reason to not do something when it is grossly disproportionate to the risk. Weighing up cost is a final consideration.

For further information, read WorkSafe’s fact sheet *Reasonably Practicable*.

Engaging with your workers

Seek the views of your workers and their representatives as you work out what control measures to use.

For further information about your duties around worker engagement, participation and representation, go to WorkSafe's website: [worksafe.govt.nz](https://www.worksafe.govt.nz)

Working with other businesses

Businesses that work together (eg share workplaces or in contracting chains) will likely share health and safety duties.

You must, so far as is reasonably practicable, consult, cooperate and coordinate activities with all other businesses you share health and safety duties with. This could include dealing with sexual harassment.

For further help, read WorkSafe's quick guide *Overlapping Duties*.

Checking your control measures are working effectively

Once you have your control measures in place, it's important to check that they're effectively managing the risks from sexual harassment. You can use the information sources described in Section 3 of this guide to help with this.

In addition, control measures should be reviewed on a routine basis (eg yearly) to check that they're being followed and are still fit-for-purpose.

5.0

How can you deal with reports of sexual harassment?

General principles

You can follow the general principles described in Figure 4 when you deal with reports of sexual harassment or other unreasonable behaviour.

These are based in part on the principles of natural justice. Natural justice applies to both parties to a complaint.

See Section 6 of this guide for where you can get advice or help.

General principles for dealing with reports of sexual harassment

Take all reports of sexual harassment seriously

Act promptly

- Set timelines and deal with reports as soon as you can after you receive them.
- Carefully and clearly consider response options for the specific circumstance.

Clearly communicate the process

- Tell everyone involved what the process is.
- Let the people involved know if there are delays to timelines.

Protect the people involved

- Protect all the people involved (including both sides of the complaint, support people and witnesses) from victimisation (eg being punished, bullied, intimidated).

Support the people involved

- Anyone involved can have a support person present at interviews or meetings (eg in-house support person, their union delegate, colleague, friend, legal representative).
- Tell everyone involved what support and representation is available to them (eg do you have an employee assistance programme, or other trained people who can provide ongoing care and support?).

Maintain confidentiality

- Ensure details of the matter are only known to those directly concerned (including their representative or support person) and those involved in investigating and considering the reported behaviour.

Treat everyone involved fairly

- Get someone unbiased and trained to look into the report of sexual harassment.
- Make decisions based on the facts.
- Clearly tell the people involved what you are going to do (taking into account privacy).

Keep good documentation

- Ensure actions and decisions are documented.
- Store all information securely and where access is restricted.

FIGURE 4: General principles when dealing with reports of sexual harassment

Note: For certain behaviour the worker could decide to first seek help from an outside organisation (eg the Police for physical assaults and criminal harassment).

The worker could also decide to raise a personal grievance under the Employment Relations Act 2000 (if an employee) or submit a complaint under the Human Rights Act 1993 with the Human Rights Commission.

Working out the approach to take

You can use Figure 5 to help you decide what is reasonable to do after receiving a report.

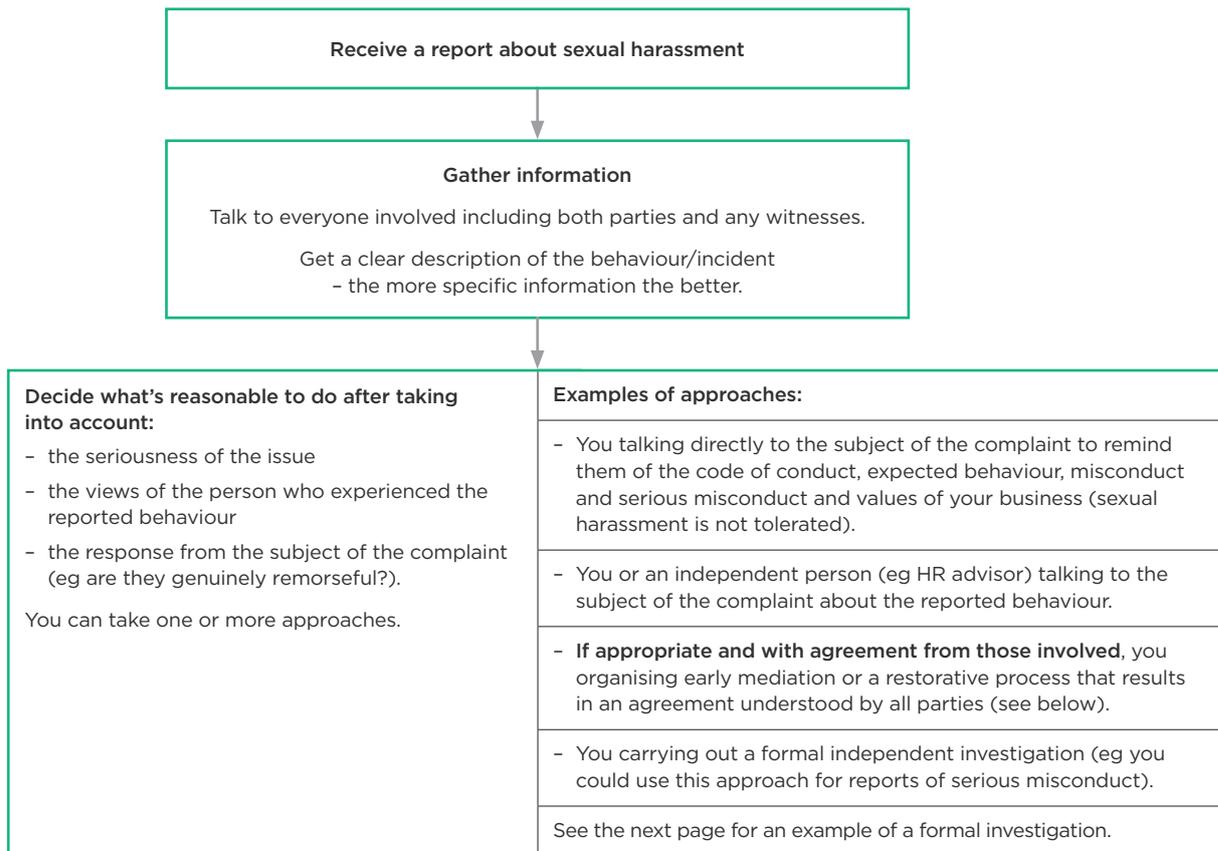


FIGURE 5:
Overview of steps for dealing with reports of sexual harassment

Mediation can be useful to restore relationships (if this is appropriate), or to agree guidelines to ensure a safe working environment.

Mediation involves a trained and impartial mediator sitting with all parties concerned to try to get an agreement and a way forward.

Mediation can be used early on in the situation or at other times (eg after an investigation). But in some circumstances, mediation may not be appropriate.

It's important that mediation creates a safe and constructive environment **and both parties have freely agreed to take part in mediation.**

Mediation can happen by a face-to-face meeting or by other means such as the mediator acting as a go-between if a person doesn't feel safe to sit in the same room with the other party (shuttle mediation).

Mediation can be run in-house or an external mediator used.

The public sector agencies that provide mediation are:

- The Ministry of Business, Innovation and Employment (MBIE's) Employment Mediation Services provide a free mediation service to any employer or employee, and can help parties resolve an employment relationship problem. Visit: www.employment.govt.nz/resolving-problems/steps-to-resolve/mediation/request-meditation
- The Human Rights Commission provides a free, confidential and impartial mediation process for complaints of sexual harassment and other forms of alleged unlawful discrimination.
Phone 0800 496 877
Email infoline@hrc.co.nz
Visit: www.hrc.co.nz

Example of a formal investigation process

You can use the approach outlined in Figure 6 to investigate reports of sexual harassment.

It's important that those involved clearly understand what to expect and how long an investigation can take.

The investigation should start as soon as possible after the report is received, and embrace the general principles described earlier to ensure fairness for everyone involved.

A terms of reference document describes how the investigation will be run. It should include:

- the purpose and scope of the investigation (what's in and what's out)
- details about the reported sexual harassment
- what process will be followed (including who will be involved, when they will have an opportunity to be heard and what interim measures will be taken)
- what the investigation report will contain, and when a draft will be provided for comment
- who the manager responsible is, and who the contact person for the investigator is
- who the decision maker will be, and the possible outcomes.

For more information, visit: www.employment.govt.nz/resolving-problems/steps-to-resolve/disciplinary-action/investigation



FIGURE 6: Overview of a formal investigation process

6.0

Who can help?

At times, you or your workers may wish to seek external help. This could happen if you need advice about what to do, someone is not satisfied by your actions, or when the behaviour is best dealt with externally (eg physical assaults and criminal harassment should be dealt with by the Police).

Figure 7 outlines the public sector agencies and other organisations that can help.

For example:

- The Human Rights Commission can help resolve complaints of sexual harassment and other forms of unlawful discrimination at work, at school, by people providing public services and other areas.
- MBIE's Employment Mediation Services is a free and confidential service to help employers or employees resolve employment relationship problems including sexual harassment allegations.
- The Employment Relations Authority can resolve disputes about employment issues including sexual harassment if mediation has failed to resolve the complaint.

When deciding which organisation to seek help from, consider:

- the nature of your relationship (eg employer and employee, contractor or something else) - the Employment Relations Act 2000 is only relevant for employer/employee relationship problems
- the expected timeframes for resolving issues⁴
- confidentiality - there's no confidentiality once a decision of the Human Rights Review Tribunal or Employment Relations Authority is published
- whether a personal grievance has been formally raised with you (the employer) and the process commenced in the Employment Relations Authority - if it has, a complaint can't be submitted to the Human Rights Commission.

⁴ For this information, contact the relevant organisation.

The **Human Rights Commission** can help resolve complaints of sexual harassment and other forms of unlawful discrimination at work, at school, by people providing public services and other areas.

It provides a free confidential mediation process for complaints of sexual harassment.

It can provide information to help you to resolve your complaint or you could be referred to a mediator. Mediators help both parties work through the issues raised in a complaint.

If mediation is unsuccessful, the **Human Rights Review Tribunal** can deal with human rights complaints (legal action).

Phone 0800 496 877
Email: Infoline@hrc.co.nz or
Visit: www.hrc.co.nz

Legislation: The Human Rights Act 1993 (HRA).

WorkSafe New Zealand is the primary work health and safety regulator – although Maritime New Zealand and the Civil Aviation Authority also carry out certain health and safety functions for their industries.

Phone 0800 030 040 (24 hours).

To raise health and safety concerns go to: worksafe.govt.nz/notifications/health-or-safety-concern

Not all concerns and notifications will meet WorkSafe's threshold for initiating a response.

Legislation: The Health and Safety at Work Act 2015 (HSWA). HSWA is the primary work health and safety legislation.

MBIE's Employment Mediation Services provides a free mediation service to any employer or employee and can help parties resolve an employment relationship problem.

Phone 0800 20 90 20 or
Visit: www.employment.govt.nz/resolving-problems/steps-to-resolve/mediation

If mediation is unsuccessful, the **Employment Relations Authority** can resolve disputes about a range of employment issues including sexual harassment.
Visit: www.era.govt.nz

Like the Employment Relations Authority, the **Employment Court** deals with cases about employment disputes. The Employment Court also deals with challenges to Employment Relations Authority decisions. Visit: www.employmentcourt.govt.nz

Legislation: Employment Relations Act 2000 (ERA). The ERA aims to build productive employment (employer/employee) relationships. It provides protection against sexual and racial harassment, which are also covered by the HRA. So sexual and racial harassment can give grounds for a personal grievance under the ERA or a claim under the HRA – the employee decides which of these options to take.

The **New Zealand Police** should be contacted about acts of violence and criminal offences.

Phone 111.

Criminal charges can be filed by the Police.

Legislation: Crimes Act 1961 and other legislation administered by the New Zealand Police.

NetSafe is New Zealand's online safety organisation.

It assists with complaints about harmful digital communications.

For information about what to do about online harassment:
Phone: 0508 638 723 or
Visit: www.netsafe.org.nz

Legislation: The Harmful Digital Communications Act 2015 (HDCA). The HDCA aims to provide a quick, efficient and relatively cheap legal avenue for people dealing with serious or repeated harmful digital communications (eg threatening or offensive emails, texts or posts in comment sections, chat rooms or social media).

Advice and support can be found from other places such as:

- your regional chapter of employers' organisation such as Employers and Manufacturers Association and Chamber of Commerce
- relevant industry and professional organisations
- Employment New Zealand: <http://employment.govt.nz>
- unions: www.union.org.nz
- community law centres: <http://communitylaw.org.nz>
- the Citizens Advice Bureau: www.cab.org.nz/Pages/home.aspx

FIGURE 7:
Where to find help

7.0

Glossary and tools

Glossary

DUTY HOLDER	EXPLANATION AND DUTIES UNDER THE HEALTH AND SAFETY AT WORK ACT (HSWA)
<p>Persons conducting a business or undertaking (PCBUs)</p> <p>Called 'business' in this guide</p>	<p>A PCBU is a 'person conducting a business or undertaking'.</p> <p>A PCBU may be an individual person or an organisation. This does not include workers or officers of PCBUs (to the extent they are solely workers or officers), volunteer associations (that do not have employees), or home occupiers that employ or engage a tradesperson to carry out residential work.</p> <p>A PCBU must ensure, so far as is reasonably practicable, the health and safety of workers, and that other persons are not put at risk by its work.</p> <p>See WorkSafe's website: worksafe.govt.nz for information about specific PCBU duties.</p>
Workers	<p>A worker is an individual who carries out work in any capacity for a PCBU. A worker may be an employee, a contractor or sub-contractor, an employee of a contractor or sub-contractor, an employee of a labour hire company, an outworker (including a homeworker), an apprentice or a trainee, a person gaining work experience or on a work trial, or a volunteer worker. It also includes an individual PCBU that carries out work for the business or undertaking.</p> <p>Workers can be at any level (eg managers are workers too).</p> <p>Workers have duties to take reasonable care for their own health and safety and to take reasonable care that they don't harm others while at work.</p> <p>Workers must co-operate with reasonable policies and procedures about sexual harassment the PCBU has in place that have been notified to them.</p> <p>Workers must comply, so far as is reasonably practicable, with any reasonable instruction about sexual harassment given by the PCBU so the PCBU can comply with the law.</p> <p>Workers should report sexual harassment they experience or see so their PCBUs can do something about it.</p>
Other persons at workplaces such as visitors	<p>Examples of other persons at workplaces include workplace visitors, casual volunteers at workplaces and customers.</p> <p>Other persons have duties to take reasonable care for their own health and safety and to take reasonable care that they don't harm others at a workplace.</p> <p>They must comply, so far as is reasonably practicable, with any reasonable instruction about sexual harassment given by the PCBU so the PCBU can comply with the law.</p> <p>Other persons should report sexual harassment they experience so the PCBU can do something about it.</p>

TABLE 2: Duty holders under the Health and Safety at Work Act 2015

Templates and tools

There are templates and tools available through the WorkSafe website: [worksafe.govt.nz](https://www.worksafe.govt.nz) such as:

- an example of a sexual harassment policy
- a template for a sexual harassment reporting form that your workers could use to report sexual harassment to you
- guidance for your workers *Sexual Harassment – advice for workers*.

Disclaimer

This publication provides general guidance. It is not possible for WorkSafe to address every situation that could occur in every workplace. This means that you will need to think about this guidance and how to apply it to your particular circumstances.

WorkSafe regularly reviews and revises guidance to ensure that it is up-to-date. If you are reading a printed copy of this guidance, please check worksafe.govt.nz to confirm that your copy is the current version.

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